Chapter CCLXV.[1]

MANAGERS TO CONSIDER ONLY MATTERS IN DISAGREEMENT.

3252. Conferees are restricted to the differences between the two Houses and may not change the text to which both Houses have agreed or incorporate new subjects.

On August 17, 1912,[2] the House having under consideration the conference report on the naval appropriation bill, Mr. John J. Fitzgerald, of New York, raised a question of order against the report on the ground that the conferees had exceeded their authority by including in the report matters not in disagreement between the two Houses.

Mr. Fitzgerald submitted that the conferees had inserted a provision for the mining of coal in Alaska; had extended the provision relative to retirement of naval officers to the Marine Corps; had provided for the creation of a reserve corps of dental surgeons, and had extended provisions for pay and allowances for Medical Corps of the Navy to the Dental Corps of the Navy, all of which were in contravention of the rule confining conferees to subjects committed to them.

The Speaker[3] ruled:

There is no question at all in the mind of the Chair but that these points of order must be sustained. As it is a question which is liable to arise several times very soon, the Chair will state his position.

The rule is this: That the conferees can not go beyond something that is in the original bill, that is proposition No. 1; or in the Senate amendment, and that is proposition No. 2; or in the House amendment to the Senate amendment, and that is proposition No. 3.

That rule is as old as the 23d day of June, 1812, and it is barely possible that it is older. But, on the 23d of June, 1812, Henry Clay rendered an opinion of which that is the substance.

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[1] Supplementary to Chapter CXXXV.

[2] Second-session Sixty-second Congress, Record p. 11176.

[3] Champ Clark, of Missouri, Speaker.

It has been stated variously by various Speakers. Speaker Crisp stated the matter with perfect clarity. In Hinds' Precedents, section 6408, volume, 5, Speaker Crisp said:

"The question for the Chair to determine is whether the amendment which has been agreed to and reported by the conference committee is germane to the amendment of the Senate or to the original bill. The amendment may not be germane to the original bill, yet if it is germane to the Senate amendment the conference committee might report it.

The Chair thinks that the practice of enlarging the powers of conference committees beyond the strict letter of the rule was wrong; that conferees ought to be held to the rule, and that amendments they propose in conference reports shall be germane either to the original text or to the amendment."

Let us apply these principles to the points raised by the gentleman from New York. of course, everybody understands that the Chair is not ruling the way he would like to see the bill go. The Chair would like to see mining operations started in Alaska in a proper way, but this is not the proper way to do it.

Page 51, line 22, the language of the bill was: "That all officers authorized in this act, etc., shall receive." The conferees inserted, after the word "officers," the words "of the Dental Corps," so that it will read "All officers of the Dental Corps" shall do so and so.

Speaker Cannon rendered an opinion involving that precise point. In volume 5, Hinds' Precedents, section 6417, the headlines or syllabi read as follows:

"The managers of a conference must confine themselves to the differences committed to them. Managers of a conference may not change the text to which both Houses have agreed."

Of course that simply states the rule. Here is the case itself:

The Speaker read the section and continued:

The conferees inserted the words "or any other" before the word "act," making it read "this or any other act," and also inserted the words "by this or any other act," so that it would read "for the personal use of any officer provided for by this or any other act, other than the President," and so forth.

Speaker Cannon said.

"The managers have inserted between the words personal' and 'use' the words 'or official.' Mr. Mann insisted that this amendment of the text, to which both Houses agreed, was beyond the power of either House, and, consequently, beyond the power of the conferees, citing the precedent of April 23, 1902."

After debate, Speaker Cannon withheld his decision, evidently wanting to investigate the matter.

Here is the sum and substance of Speaker Cannon's decision:

"This provision in the conference report inserts legislation that never was before the House or before the Senate, and it was quite competent for the conferees, if they could do this, to have stricken out the whole paragraph and inserted anything that was germane. They could have stricken out the words 'other than the President of the United States, the heads of executive departments, and the Secretary to the President'; and while there were but two words inserted, the provision, if enacted into law, would be far-reaching and would run along the line of the whole public service."

Now, that is just exactly this case as to this particular amendment.

Speaker Cannon goes on to say:

"As to the wisdom of such a provision, the Chair is not called upon to intimate any opinion. It is for the House and the Senate to determine upon the wisdom of it, and, as the House and the Senate never have considered that proposition, the Chair is of opinion that the conferees exceeded their power, and therefore sustains the point of order."

The second point of order is that on page 30, beginning with line 23, and it does not make any difference as far as the parliamentary points are concerned how desirable it is to mine coal in Alaska.

The language of the Senate amendment was:

"That $75,000 of said sum, or so much thereof as may be necessary, may be used for the survey investigation, and report upon coal and coal fields available for the production of coal for the use of the United States Navy, or any vessel of the United States."

The conferees inserted a proposition for mining coal, and surely there is a wide difference in the proposition to survey, investigate, and report upon coal and coal fields and a proposition for the mining of coal. That point must also be sustained.

In amendment 7, on page 5 of the bill, line 24, it is provided:

"Hereafter any naval officer on the retired list may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the grade form which he was retired."

The conferees inserted into that amendment these words, "of the Navy or Marine Corps." And also inserted the words, "with his consent," and made some other minor changes. The Chair believes that the Navy and Marine Corps are two different institutions, and sustains the point of order in that regard. The point of order made against the conference report on amendment No. 87 is also sustained.

So the four points of order made by the gentleman from New York are sustained.

3253. When a bill is sent to conference, matters in disagreement between the Houses, and only matters in disagreement between the Houses, are before the conferees notwithstanding House or Senate messages to the contrary.

On September 23, 1981,[1] the House disagreed to all senate amendments except one to the bill (H. R. 11945), the agricultural stimulation bill, and agreed to the conference asked by the Senate. The exception was Senate amendment No. 13, prohibiting the sale of distilled spirits during the war, which was agreed to by the House.

On the following day,[2] Mr. Joseph Walsh, of Massachusetts, rising in the House to a parliamentary inquiry, directed attention to the message from the Senate as requesting a conference with the House on the bill and amendments and the message of the House agreeing to the conference asked by the Senate. Mr. Walsh took the position that in view of its concurrence in Senate amendment No. 13 the House should have requested conference with the Senate on the disagreeing votes of the two Houses, and that in agreeing to the conference asked by the Senate on the bill and amendments, the House had agreed to a conference on Senate amendment No. 13, which was not now in dispute.

The Speaker[3] held:

Of course, the conferees have absolutely no control or jurisdiction over that amendment whatever.

Anything in controversy between the two Houses must go to a conference. Now, when they go to the conference, simply the matters that are left in controversy are considered, and if the conferees undertook to modify this amendment 13, the Chair would hold it was out of order.

3254. Conference reports are strictly construed, conferees being restricted to the literal difference between the two Houses and the insertion of any extraneous matter, however slight its effect on the general purport of the bill, is subject to a point of order.

On June 4, 1920,[4] the House proceeded to the consideration of the conference report on the bill (H. R. 10378) providing for the American merchant marine.

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[1] Second session Sixty-fifth Congress, Record, p. 10694.

[2] Record, p. 10703.

[3] Champ Clark, of Missouri, Speaker.

[4] Second session Sixty-sixth Congress, Record, p. 8576.

The report having been read, Mr. Tom D. McKeown, of Oklahoma, presented a question of order against the report on the ground that the conferees had inserted language not to be found in either the bill or the amendments. Mr. McKeown referred specifically to the following proviso inserted by the conferees as being outside the differences committed to them.

And provided further, That whenever the board shall determine, as provided in this act, that trade conditions warrant the establishment of a service or additional service under Government administration where a service is already being given by persons, citizens of the United States, the rates and charges for such government service shall not be less than the cost thereof, including a proper interest and depreciation charge on the value of Government vessels and equipment employed therein.

Mr. George W. Edmonds, of Pennsylvania, explained in rebuttal that the conferees had enlisted the services of legislative clerks and Treasury experts in order to express the legislation in better form, but that no attempt had been made to change the meaning of the propositions presented to the conferees and that the proviso objected to was merely section 22 of the original bill transposed to a more appropriate place in the report.

The Speaker pro tempore [1] ruled:

The Gentleman from Oklahoma makes the point of order against the conference report and contends that in amendment 52 the conferees have exceeded their authority by inserting the language at the end of the Senate amendment. The Chair has examined the amendment and the language reported by the conferees, and notes, as was pointed out by the gentleman from Pennsylvania, that substantially the same language was carried in section 22 of the bill amended by the Senate. The conferees have transferred that language in practically the same form to section 7 of the bill, and this provision would seem to be germane. But at any rate that section was in controversy, and the transfer by the conferees was not in excess of their authority.

The gentleman from Oklahoma also bases his point of order on the contention that the conferees have exceeded their authority in reporting language, which is amendment No. 128. This contention raises a question of considerable more difficulty. Section 25 of the bill as amended by the Senate—that amendment being No. 128—provides for certain exemptions to owners of documented vessels operating in foreign trade from the tax imposed by Title III of the revenue act, and also provides that citizens may sell during a certain period vessels documented under the United States law and that they should be exempt from certain titles of the revenue act of 1913. It also provides a board which is to determine the amount to be allowed for annual depreciation of vessels and for allowances and deductions to be allowed, and in case of disagreement the contention to be referred to the President. The conferees have recast that amendment in its entirety and instead of providing certain exemptions they have reported an amendment to the revenue act which in general language retains the features of Senate amendment No. 128, but they incorporate that in a new section to the revenue act of 1918, to be known as section 207 with subparagraphs. But the conferees have not only retained substantially the language of the Senate amendment, but they have added other amendments of an administrative character to the revenue act and enlarged somewhat and further prescribed the duties of the Commission of Internal Revenue. They have also inserted a paragraph known as paragraph D, requiring the furnishing of a bond or surety, and in lieu of a bond permitting the deposit of the amount of the taxes or obligations to be held in trust with the approval of the Secretary. This paragraph, as well as the one preceding and the one following, would seem to deal in administrative provisions and put restrictions on, and also enlarge the scope of, the authority of the Internal Revenue Commissioner. The Chair finds nothing in the Senate amendment after a very careful reading of the language, neither does he find anything in the amendment was reported by the conferees, that part of the language which has been

[1] Joseph Walsh, of Massachusetts, Speaker pro tempore.

retained, which brings these matters in controversy. They seem to be entirely new matter, which the conferees have reported in attempting to adjust their disagreement upon the Senate amendments and it would seem to the Chair that they have not followed the rules prescribed in adjusting differences between the two Houses in conference. The chair appreciates that it is a very important matter to rule that a conference report at this time should be returned to the conferees, and yet the Chair is clearly of the opinion that the conferees have exceeded their authority; that if they had retained the Senate amendment in the language in which the Senate reported it, and had not attempted to amend the revenue act, but had simply added the language which has been added in attempting to amend the revenue act, they still would have exceeded their authority. The are retaining the language of a Senate amendment and in addition are imposing certain administrative requirements upon the Commissioner of Internal Revenue which were not necessarily involved in the Senate amendment. The administrative requirement in the Senate amendment, upon the reading of that amendment, could have been left to the Shipping board; but in the language which has been reporte4d by the conferees they have proposed certain restrictions and have made certain regulations which will have the effect of law; and in writing them in as an amendment to a revenue law like a new section it seems to the chair clearly that it is not within their jurisdiction, because there is nothing in the Senate amendment that, in the opinion of the Chair, places those matters in conference; and much as the Chair regrets it, he feels constrained to sustain the point of order.

3255. Managers may not include in their report amendments relating to propositions not in disagreement between the two Houses.

On February 27, 1929,[1] the Clerk read the conference report on the bill (S. 1781) to establish load lines for American vessels.

Mr. Charles L. Abernathy, of North Carolina, raised the question of order that the conferees had exceeded their authority by including in the report an amendment authorizing the Secretary of Commerce to make a study of load-line legislation and prepare bill to be submitted to the House.

The Speaker[2] ruled:

The Chair realizes the gravity of outlawing a conference report at this stage of the session, but the Chair is called upon to decide whether the conferees have exceeded their power in putting in the amendment referred to. Section 9 of the House amendment provides:

"SEC. 9. this act shall not apply to vessels operating exclusively on the Great Lakes or to barges otherwise coming within the provisions of this act or to lumber schooners operating to and from territory contiguous to the United States."

The Senate disagreed to that.

The conferees have brought in an amendment directing the Secretary of Commerce to make a comprehensive study of those lines. The Chair cannot see in either the Senate bill or the House amendment any proposition that would direct the Secretary of Commerce to make an investigation. The House evidently never thought of it, and the Senate evidently never though of it. While it might be vaguely germane to the purposes of the bill, the Chair thinks it is entirely new matter, never contemplated by either body. The Chair thinks the conferees exceeded their authority. Therefore the Chair feels constrained to sustain the point of order.

3256. The Speaker may rule a conference report out of order, if it is shown that the conferees have exceeded their authority.

Conferees may not include in their report new items even when germane, and may not change the text to which both Houses have agreed.

The managers having appended to a Senate amendment, pertaining to charters of national banks, a provision for investigating relations between

[1] Second session Seventieth Congress, Journal, p. 403; Record, p. 4614.

[2] Nicholas Longworth, of Ohio, Speaker.

the banking system and commodity prices, the Speaker held they had gone beyond the differences committed to them.

Where the statement is read in lieu of the conference report, points of order should be made or reserved before the statement is read.

When any portion of a conference report is ruled out on a point of order the effect is as if the report had been rejected by a vote of the House, and motions for disposition of Senate amendments and for conference are in order de novo.

A motion to instruct conferees is in order only after the decision to send to conference and before conferees are named.

A motion to recommit the conference report is in order at any time before final action is taken on the report.

On June 22, 1926,[1] Mr. Louis T. McFadden, of Pennsylvania, called up the conference report on the bill (H. R. 2) to provide for the consolidation of national banking associations and asked unanimous consent to the reading of the statement in lieu of the report.

Mr. James G. Strong, of Kansas, announced that he desired to submit a point of order and asked when the question should be presented.

The Speaker[2] replied:

The Chair understand the rule to be that if the statement is read in lieu of the report it is necessary to reserve points of order before the statement is read.

In response to an inquiry from Mr. Morton D. Hull, of Illinois, as to the proper time to move to instruct the conferees, the Speaker continued:

The proper time to instruct the conferees in case the point of order against some portion of the report is sustained and the House should agree to send the bill back to conference is at that time—before the appointment of the conferees and after the decision is made to send it back.

Answering a further parliamentary inquiry from Mr. Otis Wingo, of Arkansas, as to the status of the report in event the point of order should be sustained, the Speaker ruled:

In case the Chair should not sustain the point of order the gentleman would be in order to move to recommit the report before final action was taken upon the conference report.

If the point of order should be sustained, then the entire report is out of order, and it would be necessary to send the bill back to conference.

The House could then take such action as it wished, subject to the general rules of the House.

If the House should decide to send the bill back to conference, it would then be in order, before the appointment of the conferees, to instruct the conferees at that time.

The point of order having been reserved, the statement was read in lieu of the report. Thereupon, Mr. Strong insisted on the point of order. Mr. Edward J. King, of Illinois, also submitted points of order.

After extended debate, the Speaker held:

The gentleman from Illinois a day of two ago submitted to the Chair a written argument upon this matter relating particularly to amendment No. 38. The gentleman from Illinois bases

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[1] First session Sixty-ninth Congress, Record, p. 11788.

[2] Nicholas Longworth, of Ohio, Speaker.

his argument mainly on a decision rendered a good many years ago by Speaker Blaine, wherein he held in part as follows:

"The power of a conference committee, which, as the gentlemen well know, the two Houses have been in the habit of considerably enlarging, fairly includes the power to incorporate germane amendments. If the gentleman from Indiana, Mr. Holman, makes the point that the amendments he specifies are not germane, the Chair will examine the question; but the mere fact that the proposition embraced matters which were not originally before the House or Senate would not be sufficient to require them to be ruled out."

That is the one decision that the gentleman from Illinois quotes on this precise point. There has been no decision to that effect since that time so far as the Chair is aware. On a number of occasions, both since he was elected Speaker and therefore, the Chair has had occasion to look into the question with respect to the power of conferees. As the Chair understands the precedents and the rule today, it is that the managers of a conference must confine themselves to the differences committed to them and may not include subjects not within the disagreements, even though germane to the question in issue. Immediately following the decision quoted in Hinds' Precedents to which the Chair has referred, in which Speaker Blaine seemed to intimate that if an amendment was entirely germane it might be in order, notwithstanding the fact that the conferees departed from the differences committed to them, there is a decision by Speaker Reed, which covers the precise point involved in this case.

This was in 1898, and the decision of Speaker Blaine was in 1871, 27 years previously. In this instance the situation was this, and is to be found on page 720 of Hinds' Precedents, volume 5:

"During the debate it was developed that among the Senate amendments was a provision relating to the fishery question between Canada and the United States. To this the conferees added a provision for a commission to consider the differences between Canada and the United States in relation to trade relations."

It seems to the Chair that is practically the same situation we now find before us. Speaker Reed, in passing upon the question, said:

"The Chair dislikes to pass upon such matters as this, but it is a well-established principle that no conference committee can introduce a new subject, one that was not in dispute between the two Houses; and it is evident that everybody in the House realizes that this amendment which has been presented is really beyond the power of the committee of conference. That being so, and the point being made, there is no other course but to sustain the point of order, which the Chair accordingly does."

From then on through many pages of Hinds' there are a number of precedents discussed, all of which hold at least as strongly as did Speaker Reed that a committee of conference may not include subjects not within the disagreements between either House.

Later in 1902, Speaker Henderson decided that—

"A conference committee may not include in its report new items constituting in fact a new and distinct subject not in difference, even through germane to questions in issue."

In other words, the later precedents of the House go so far as to say that the question of germaneness has nothing to do with the question if the conferees have exceeded their powers in regard to the action of either House.

The Chair is not aware, certainly since he has been a Member of this body and heard this question ruled on repeatedly, of any precedent which would go to show that a conference committee might, provided the proposition were germane, go beyond the limits set in the decisions just referred to. The Chair is not called upon therefore to determine the question as to whether this provision as to a commission is germane to the bill or not. If he were, he would think it was a matter of very grave doubt as to whether to a bill dealing with the Federal reserve system and branch banks an amendment providing for the appointment of a committee to make an inquiry into the price of commodities in the United States affected since the year 1914, if at all, by the Federal banking laws could be regarded as germane. But the chair is not called upon to determine that. The Chair fails to find in any part of this bill a suggestion on the part of either House of the appointment of a commission of this kind. The Chair thinks beyond all question that the

conferees have exceeded their powers in reporting such an amendment to the House. The chair also sustains the points of order with regard to two other amendments as presented by the gentleman from Illinois. In both cases the conference committee have inserted matter which was not in disagreement at all and have changed the text which was identical in both the House and Senate bills. The Chair forgot to mention in the discussion of the brief of the gentleman from Illinois that the other precedents quoted by him were where the Senate had stricken out the entire House bill and substituted a different bill, in which case, of curse, the powers of the committee are much broader and almost any amendment may be in order, provided only it is germane. But that is not this case, and the Chair therefore sustains the points of order made, both that of the gentleman from Kansas and that of the gentleman from Illinois.

The Speaker also held, in response to an inquiry from Mr. Finis J. Garrett, of Tennessee, that the point of order against the conference report having been sustained, the situation was as if the report had been rejected by a vote of the House, and recognized Mr. McFadden to move to disagree to the Senate amendments and ask conference with the Senate.

3257. The managers of a conference may not in their report change the text to which both Houses have agreed.

When a conference report is ruled out of order, the bill and amendments are again before the House as when first presented, and motions relating to amendments and conference are again in order.

On May 30, 1924,[1] the Clerk read the conference report on the bill (H. R. 7041) to provide compensation for employees of the United States suffering injuries while in the performance of their duties.

The reading of the report having been concluded, Mr. Louis C. Cramton, of Michigan, made the point of order that the conferees had modified the text of the bill to which both Houses had agreed.

Mr. Cramton explained that the conferees had accepted the one minor amendment proposed by the Senate, but in addition had inserted an amendment of their own in another part of the bill passed by both Houses.

The Speaker[2] ruled:

The Senate inserted an amendment of a few words. In conference that amendment was accepted, but an additional provision was inserted, not as an amendment to the Senate amendment but as an amendment to the original text several lines below. Whether it is germane or not, and whatever might be the Chair's original opinion if there were no precedents, the Chair thinks the precedents abundantly establish the fact that conferees are very closely limited and that they must not add anything to words which have already been agreed upon by both Houses. In this case, it seems perfectly clear to the Chair, the amendment is put in at a different place and affects language not connected with the Senate amendment. It is put in at a place which is different, and therefore changes the language which has already been agreed upon by both Houses.

Therefore the Chair feels obliged to sustain the point of order.

Thereupon, Mr. Leonidas C. Dyer, of Missouri, offered a motion to recede and concur in the Senate amendment with an amendment.

Mr. Nicholas Longworth, of Ohio, objected that motions for the disposition of the Senate amendment were not in order for the reason that a conference report when ruled out of order was referred to the committee of conference.

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[1] First session Sixty-eighth Congress, Record, p. 9923.

[2] Frederick H. Gillett, Speaker.

The Speaker said:

No; the sustaining of a point of order against a conference report ends the conference, and ends the jurisdiction of the conferees.

It is as if the conference report has been disagreed to. Therefore, the bill with the Senate amendment came up in the House. The House can send it back to conference or can act directly on the Senate amendment.

The Clerk will report the motion of the gentleman from Missouri.

3258. The managers of a conference must confine themselves to the differences committed to them, and may not include subjects not within the disagreements, even though germane to a question in issue.

Conferees, having agreed to a Senate amendment pertaining to Army aircraft with an amendment pertaining to naval aircraft, were held to have exceeded the differences committed to them.

A conference report have been ruled out on a point of order, consideration was authorized by special order reported from the Committee on Rules.

On June 25, 1926,[1] Mr. W. Frank James, of Michigan, called up the conference report on the bill (H. R. 10827) to increase the efficiency of the Army Air Corps.

The statement having been read in lieu of the report, Mr. Eugene Black, of Texas, who had reserved points of order on the report, raised the question of order that the conferees had exceeded their authority by including in the report provisions relative to the naval aircraft not in disagreement between the two Houses.

The Speaker[2] sustained the point of order and held:

It may be true, as has been argued, that if this were merely a question of jurisdiction, the Committee on Military Affairs might have power in the original instance to report a bill such as this; but the question that arises is not one of committee jurisdiction, but a question purely of the power of the conferees and whether or not they have exceeded their power in this instance.

The rule is very well settled, passed on by a number of Speakers, as to the powers of conferees. It is well described in the Manual:

"The managers of a conference must confine themselves to the differences committed to them and may not include subjects not within the disagreements, even though germane to a question in issue."

Therefore the question of whether or not this amendment is germane has nothing to do with the point of order as raised by the gentleman from Texas. The question is solely, Did the conferees go beyond the differences between the two Houses?

The bill is entitled, "To provide more effectively for the national defense by increasing the efficiency of the Air Corps of the Army of the United States, and for other purposes." There is nothing said in the bill, either as it passed the House or as it passed the Senate, with relation to aviation for the Navy. The conferees therefore, in including in it matter relating to the Navy must have exceeded their powers, because they have departed from the exact differences that were before them in conference.

The Chair therefore sustains the point of order made by the gentleman from Texas.

Subsequently, on June 29, 1926,[3] Mr. Bertrand H. Nell, of New York, by direction of the Committee on Rules, presented the following privileged resolution:

Resolved, That notwithstanding previous action of the House relative to the conference report on the disagreeing votes of the two House on the bill H. R. 10827, immediately upon the adoption

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[1] First session Sixty-ninth Congress, Record, p. 11982.

[2] Nicholas Longworth, of Ohio, Speaker.

[3] Record, p. 12254.

of this resolution the House shall consider said conference report without the intervention of points of order against the same.

The resolution having been adopted; Mr. W. Frank James, of Michigan, again called up the conference report which, after consideration, was agreed to, yeas 256, nays 12.

3259. Conferees may not change the text to which both Houses have agreed and the mere amendment by one House of an item in a bill of the other House does not authorize the elision of the entire item.

Where an amendment strikes out an entire paragraph and inserts a new text, the entire subject is committed to the conferees.

The ruling out of conference report on a point of order is equivalent to its rejection by the House and the bill and amendments are again before the House as if they had not gone to conference.

The stage of disagreement having been reached, the motion to recede and concur has precedence over the motion to refer.

While the Member in charge must yield for preferential motions, a Member may not by offering such motion deprive the Member in charge of the floor.

On March 8, 1910,[1] the House had under consideration the conference report on the District of Columbia appropriation bill, when Mr. Herbert Parsons, of New York, made the point of order that the conferees had eliminated a portion of the text agreed to by both Houses. Mr. Gardner submitted that in striking out the item providing an appropriation for playgrounds included in the bill as it passed the House and agreed to by the Senate with an amendment making the appropriations available for supervision, the conferees had exceeded their authority.

After debate, the Speaker[2] sustained the point of order and said:

The Chair calls the attention of the House again to the provision as it appeared in the bill as it passed the House.

"Playgrounds: For maintenance, repairs, equipment, and supplies, $17,000, which sum shall be paid wholly from the revenues of the District of Columbia."

That provision, as the Chair has read it, went to the Senate. The Senate amends first, in amendment numbered 74, after the word "equipment," by inserting the word "supervision," and again in the same provision, by amendment numbered 75, it struck out the words "which sum shall be paid wholly from the revenues of the District of Columbia." Now, the House and Senate were agreed on certain language, namely, "for maintenance, repairs, equipment, and supplies, $17,000."

But both Houses agreed to the text, the Senate proposing, however, to insert the word "supervision" as a change to the text. Now, that amendment of the Senate was to the provision of the House. But the amount of $17,000 appropriated, with the objects as defined by the House, could not be changed, because the Senate had not provided for a change by way of amendment. If the Senate had amended by striking out the whole paragraph and inserting a new paragraph, then the whole question would have been in conference, and it would have been admissible in settling the differences between the two Houses to have made any germane agreement that would bring the conferees together. Now, with the two amendments referred to, the House and the Senate, to settle the disagreements, at a part where there was no disagreement, strikes out a whole provision.

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[1] Second session Sixty-first Congress, Record, p. 2920.

[2] Joseph G. Cannon, of Illinois, Speaker.

The Chair thinks that is a change of the text to which both Houses had agreed, and the precedents, so far as the Chair has been able to examine them, are against the exercise of that power even by the House itself, without the concurrence of the other body. It could only be done by the House and by the Senate by a concurrent action. The Chair feels compelled to sustain the point of order.

The Speaker having announced his decision, Mr. James A. Tawney, of Minnesota, moved that the conference report be referred to the Committee on Appropriations with instructions to report it back to the House forthwith with an amendment striking out the paragraph.

Mr. James R. Mann, of Illinois, objected that the motion was not in order.

The Speaker sustained the point of order and held:

The Chair calls the attention of the gentleman that under the practice of the House the sustaining of a point of order to a conference report is equivalent to the rejection, and that the next proceeding would be for the House to take such action as it may desire, de novo, as if this bill were here for the first time with the Senate amendments disagreed to.

It is in order to make a motion to agree to any of the amendments of the Senate.

The effect of the statement of the Chair, sustaining the point of order, is to make the conference report as if it had not been made, and the bill stands now upon the House provisions and upon the Senate amendments. The House have possession of the bill, it is in order for the House to treat it just as it would have treated it if the conference report had been voted down.

This is the condition as the Chair understands it: The House passed the bill, the Senate amended it, the House disagreed to the Senate amendments, it went to conference, the conference has constructively failed, and this bill is now before the House as if it had not gone to conference. So that the Senate amendments must be disposed of.

Mr. Parsons moved that the House recede and concur in the amendment of the Senate.

Mr. Tawney offered a motion to refer as preferential.

The Speaker cited section 6225 of Hinds' Precedents holding that the motion to insist has precedence of the motion to refer, and reasoned that inasmuch as the motion to recede and concur takes precedence of the motion to insist, therefore, the motion to recede and concur takes precedence over the motion to refer.

The Speaker then recognized Mr. Parsons to move to recede and concur, but held that the motion did not entitle him to the floor as against the Member in charge of the bill.

3260. Insertion by managers of new matter in a conference report renders it subject to the point of order that the managers have exceeded their authority.

On April 10, 1920 [1] the conference report on the Post Office appropriation bill being under consideration in the House, Mr. L.C. Dyer, of Missouri, made the point of order that the managers had exceed their jurisdiction.

In support of this point of order, Mr. Dyer called attention to Senate amendment No. 3, making an appropriation for the purchase of land immediately available, to which the conferees had attached a proviso authorizing the Postmaster General to erect a building on the land.

[1] Second session Sixty-sixth Congress, Record, p. 5504.

The Speaker [1] ruled:

The Chair regrets very much to have a conference report go out on a point of order, and in any case where he felt justified in doing so would overrule the point of order; but the Chair does not see how this amendment can possibly be hung on the Senate amendment, and the Chair is regretfully obliged to sustain the point of order.

3261. On June 3, 1910,[2] the House was considering the conference report on the bill (H. R. 10378) to provide for the American merchant marine, when Mr. Finis J. Garrett, of Tennessee, made the point of order that the conferees had exceeded their authority by incorporating matter not in disagreement between the two Houses.

Mr. Garrett cited the proviso in Senate amendment No. 15, reading as follows:

Provided, That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the acts hereby repealed.

for which the conferees had substituted the following language:

And shall have authority to adjust, settle, and liquidate all agreements, express or implied, on a fair and equitable basis.

Mr. Garrett contended that the substitute changed the tenor of the original proviso and inserted language used nowhere in either the House bill or the Senate amendment.

The Speaker [3] sustained the point of order and said:

Although the Chair dislikes to hold a conference report out of order, because it sends the report back, yet it seems to the Chair quite clear that the conferees in this case exceeded their authority. The only difference between the House was as to the right to sue the United States. Then they have added a provision of final settlement, and there seems to be a difference of opinion by the gentleman who have discussed that provision whether that changed section (c) or did not. It seems to the Chair that it enlarges the authority, because section (c), as the Chair understands, simply applies to those powers which the board received from the President, whereas this clause authorizes the board to settle all agreements, those which it made of its own right and those for which it received jurisdiction from the President. The Chair does not think that is necessary for a decision. It seems to the Chair very clear that this final amendment was not in dispute between the two Houses, and by striking out the Senate provision and putting in this provision, which was entirely different from it and not germane, the conferees exceeded their authority and therefore the Chair is constrained to sustain the point of order.

Mr. George W. Edmonds, of Pennsylvania, inquired as to the status of the conference report after the point of order had been sustained.

The Speaker held that the report had been rejected and recognized Mr. Edmonds to move that the House further insists on its disagreement to the Senate amendments and ask further conference with the Senate.

3262. A germane modification of an amendment in disagreement was held not to invalidate a conference report.

On May 10, 1910,[3] the conference report on the bill (H. R. 13915) was read for consideration.

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[1] Frederick H. Gillett, of Massachetts, Speaker.

[2] Second session Sixty-sixth Congress, Record, p. 8412.

[3] Second session Sixty-first Congress, Record, p. 6037.

Mr. James A. Tawney, of Minnesota, lodged a point of order against the conference report on the ground that the conferees had injected new matter in Senate amendment No. 15, transferring coal investigations from the Geological Survey to the Bureau of Mines.

In the debate it appeared that the original Senate amendment had provided for the transfer of "clerks" from the Survey to the Bureau and that the conferees had modified the amendment to provide for the transfer of "employees, property, and equipment."

The Speaker [1] overruled the point of order and held:

Section 4 of the House bill reads as follows:

"The Secretary of the Interior is hereby authorized to transfer to the Bureau of Mines from the United States Geological Survey the supervision of the investigation of structural material and the analyzing and testing of coal, lignites, and other mineral substances, and the appropriation made for any such investigation may be expended under the supervision of the Commissioner of Mines in manner as if the same were so directed in the appropriation act, and such investigation shall hereafter be within the province of the Bureau of Mines."

It will be noticed that by the House provision certain matters were transferred, as read by the Chair. Now, the Senate amended section 4, which the Chair has just read, by inserting at the end of section 4 these words:

"And shall cease and determine under the organizations of the United States Geological Survey, and such experts and clerks as are now employed by the Geological Survey in connection with the subject herein transferred to the Bureau of Mines are authorized to be transferred to said bureau by the President."

Now, that was a Senate amendment to Section 4. The House disagreed to the Senate, amendment. The Conferees met, and having the disagreement before them, struck out the words "and clerks" of the Senate amendment and inserted "employees, property, and equipment."

The only change in the Senate amendment made by the conferees was to strike out the words "and clerks" and insert "employees, property, and equipment." It seems to the Chair that the conferees did not exceed their jurisdiction, the main question being whether the Geological Survey should cease and determine as to the work specified. The other matter is an incident of the settlement of the main question.

Now, as to the precedent that the gentleman from Minnesota refers to, the Chair finds on examination that it is not in point, because in that case the House and Senate had agreed to a text and there was no difference between them, and the conferees changed that text, which was not in disagreement.

The Chair, therefore, overrules the point of order.

3263. Conferees may not go beyond the limits of the disagreements confided to them, and where the differences involve numbers, conferees are limited to the range between the highest figure proposed by one House and the lowest proposed by the other.

Where on House strikes out all of a bill of the other after the enacting clause and inserts a new text, conferees have a wide discretion in incorporating germane amendments and may even report a new bill on the subject.

On August 14, 1911,[2] Mr. Oscar W. Underwood, of Alabama, called up the conference report on the bill (H. R. 11010) reducing tariff duties on wool, and asked unanimous consent that the statement be read in lieu of the report.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[1] First session Sixty-second Congress, Record, p. 3912.

Under reservation of the right to object, Mr. James R. Mann, of Illinois, made the point of order that the conferees had exceeded their powers by incorporating in their report provisions on subjects not in disagreement. Mr. Mann referred specifically to the rates on Brussels carpets, which were fixed at 30 per cent in the House bill, at 35 per cent in the Senate amendment, but which had been raised to 40 per cent in the conference report.

The Speaker [1] ruled:

The desire of the present occupant of the chair is to rule fairly; and so far as I am individually concerned, I would rather have it said of me, after I have finally laid down the gavel, that I was the fairest Speaker that the House ever had, than that I was the greatest.

The gentleman from Wisconsin last Saturday made a remark which deserves the consideration of the House, and that was that no Speaker could afford to render a decision for temporary benefit to his party fellows without considering the ultimate and general effect of it. That is absolutely true.

The particular matter at bar seems to have been differentiated into two classes by previous Speakers: One, where the dispute between the who Houses is simply a dispute about rates or about amounts, and the other where one House strikes out everything after the enacting clause and substitutes an entirely new bill.

The Chair has no doubt whatever that at least one contention of the gentleman from Illinois is correct. That is, that if it is a mere dispute about amounts or rates, the conferees can not go above the higher amount or rate named in one of the two bills or lower than the lower rate named in one of the two bills. But that is not this case. In this case the Senate struck out everything after the enacting clause and substituted a new bill. Last Saturday there did not seem to be any precedents to fit the point under consideration. This time, fortunately for the Chair at least, four great Speakers of this House have ruled on the proposition involved—Speaker Colfax, who was subsequently Vice President; Speaker Carlisle, subsequently Senator and Secretary of the Treasury; Speaker Henderson, and Speaker Cannon. The Chair does not know anything about the parliamentary clerks to Speaker Colfax and Speaker Carlisle, but the Chair is fully persuaded that every Member of this House who has served in prior Congresses will agree that Speaker Henderson and Speaker Cannon had the advantage of being advised by one of the most skillful parliamentarians in this country, the present Member from Maine, Mr. Hinds. [Applause.]

All four of these Speakers, three Republicans and one Democrat, have passed on this question, and they have all ruled that where everything after the enacting clause is stricken out and a new bill substituted, it gives the conferees very wide discretion, extending even to the substitution of an entirely new bill. The Chair will have three of these decisions read, and will have the decision of Speaker Cannon incorporated into this opinion, because the question ought to be definitely settled during the life of this Congress at least.

The Speaker then directed the Clerk to read sections 6421, 6423, and 6424 of Hinds' Precedents, and concluded:

In view of this long line of decisions by illustrious Speakers, the Chair overrules the point of order of the gentleman from Illinois.

3264. Where the two Houses fix different periods of time the conferees have latitude between the two, but may not go beyond the longer nor within the shorter.

On March 2, 1915,[2] the conference report on the bill (S. 52059) establishing mail lines with foreign countries and known as the ship purchase bill, was before the

[1] Champ Clark, of Missouri, Speaker.

[2] Third session Sixty-third Congress, Record, p. 5208.

House and had been read when Mr. James R. Mann, of Illinois, made the point of order that it contained matter which was not properly before the conferees.

Mr. Mann pointed out that as originally passed by the Senate the bill would have gone into effect immediately on its passage; that in the House amendments it was provided that the bill should go into effect two years after its passage; but that the conference report provided it should become effective three years after passage. Mr. Mann contended that the conferees could have designated any time between the passage of the bill and two years after its passage, but were not authorized to extend the time beyond the limit of two years set by the House amendment.

The Speaker [1] sustained the point of order and ruled:

If there is anything settled about conferees between the two Houses it is this: Where two amounts are named, and the question is referred to the conferees, they may oscillate as much as they please between the two extremes, but they can not go below the lower amount and they can not go above the higher amount. That applies to sums of money in appropriation bills. This has been ruled so often that it is as familiar as the multiplication table. In tariff bills, where the House suggests one rate on any given article and the other House suggests another rate, the conferees can not go below the lower, and they can not go above the higher rate.

This happened when the Payne bill was passed: There were certain amendments in controversy. The House fixed the rate on shoes at 15 per cent, and the Senate fixed it at 20 per cent. President Taft notified the conferees that if they did not cut the rate to 10 per cent he would not sign the bill, and as the conferees could not go below the minimum of 15 per cent, the House had to pass a special resolution in order to enable them to cut the rate down to 10.

As far as the suggestion that where everything after the enacting clause is struck out, then the conferees have carte blanche to bring in a bill; that is not this case here. The House did not strike out everything after the enacting clause in the Weeks bill. It particularly agreed to the Weeks bill, which has really been in conference only technically. But the limit of time was fixed at two years, and the conferees extended it to three years. If they could extent it beyond two years, they could extend it until the end of time. Their limit was from zero to two. In the nature of things they could not go below zero; under the practice of the two Houses they could not go higher.

The Chair sustains that point of order.

3265. Where all of a bill after enacting clause is stricken out, the conference report may include any germane provision.

Points of order are properly raised or reserved against a conference report after it is read, and before the statement is read, and whether the statement is read in lieu of the report or after the report, it is too late to raise a question of order after the reading of the statement.

On May 9, 1924,[2] Mr. Albert Johnson, of Washington, called up the conference report on the bill (H. R. 7995) to limit the immigration of aliens into the United States, and asked unanimous consent that the statement be read in lieu of the report.

Pending the question, Mr. Adolph J. Sabath, of Illinois, inquired when a point of order should be properly presented it the request was agreed to.

The Speaker [3] replied that points of order should be made or reserved in either event before the reading of the statement.

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[1] Champ Clark, of Missouri, Speaker.

[2] First session Sixty-Eighth Congress, Record, p. 8227.

[3] Frederick H. Gillett, of Massachusetts, Speaker.

Mr. Sabath reserved a point of order and, the statement having been read, submitted that the conferees had exceeded their jurisdiction by including the following provision:

Provided: That this subdivision shall not take effect as to exclusion until March 1, 1925, before which time the President is requested to negotiated with the Japanese Government in relation to the abrogation of the present arrangement on this subject.

Mr. Sabath argued that under the House bill the legislation would have gone into effect July 1, 1924; under the Senate bill it would have become effective immediately; and that the conferees by delaying the date until March 1, 1925, had gone beyond the dates in dispute between the Houses.

Mr. John E. Raker, of California, made the further point of order, based on same proviso, that the request that the President negotiate with the Japanese Government was not germane to the bill passed by the House or to the substitute inserted by the Senate.

The Speaker in passing on the first point of order differentiated between precedents in which individual items were at issue and the present case in which all after the enacting clause had been stricken out, and said:

The first point made by the gentleman from Illinois, it seems to the Chair, is thoroughly disposed of by the decision of Speaker Clark, quoted in the Manual. It says:

"And it has been held so often and so far back and by so many Speakers that where everything after the enacting clause is struck out the conferees have carte blanche to prepare a bill on that subject; that it seems to the Chair that question is no longer open to controversy."

The Chair on that ground overrules the point of order.

As to the second point of order, involving a question of germaneness the Speaker held:

But it seems to the Chair that inasmuch as this report terminates the understanding referred to on July 1, this provision extending it to March 1, 1925, and at the same time asking that the President meanwhile shall negotiate to abrogate it, which may possible terminate it sooner, that makes it clearly germane to the subject, and the Chair overrules the points of order.

3266. Where an entire bill has been stricken out and a new text inserted, the conferees exercise broad authority and may discard language occurring both in the bill and the substitute.—On January 29, 1927,[1] the House proceeded to the consideration of the conference report on the bill (H. R. 9971) for the regulation of radio communications.

Mr. Tom D. McKeown, of Oklahoma, made the point of order that the conferees had stricken out matter agreed to by both Houses.

The Speaker[2] said:

The Chair thinks he can simplify this situation by ruling with reference to the points of order that inasmuch as the Senate struck out the entire House bill and inserted a bill of its own, any amendment which was germane is in order. The Chair will quote the precedent from Hinds' Precedents, volume 5, section 6421, as follows:

"The Chair understands that the Senate adopted a substitute for the House bill. If the two Houses had agreed upon any particular language, or any part of a session, the committee of conference could not change that; but the Senate having stricken out the bill of the House and inserted

[1] Second session Sixty-ninth Congress, Journal, p. 435; Record, p. 2557.

[2] Nicholas Longworth, of Ohio, Speaker.

another one, the committee of conference have the right to strike out that and report a substitute in its stead. Two separate bills have been referred to the committee, and they can take either one of them, or a new bill entirely, or a bill embracing parts of either. They have a right to report any bill that is germane to the bills referred to them."

The Chair thinks that is the better practice, and it has been universally followed in the House, that where the Senate strikes out the entire House bill and substitutes one of its own, it is in order for the conferees to recommend the adoption of any provision that is germane. That ruling will cover all amendments.

On February 8, when the conference report came up for consideration in the Senate, Mr. Robert B. Howell, of Nebraska, raised a similar question of order and quoted the second section of Rule XXVII of the Senate as follows:

Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses.

The Vice President [1] ruled:

The Chair would remark that when the amendment of the Senate is a new bill in the nature of a substitute instead of various amendments to different parts of the bill, the whole status of conference is changed under the precedents. Under the line of argument which the Chair followed the other day in holding that new matter when germane could be put in as an amendment under those circumstances, he would seem to be justified now in overruling the point of order. The status of conference being changed where the Senate substitutes a bill as an amendment, the precedents in effect hold that the restrictions of Rule XVII, paragraph 2, do not apply, and he so rules. The point of order is not well taken.

Mr. Key Pittman, of Nevada, having appealed from the decision of the Chair, the appeal was laid on the table, yeas 41, nays 34, and the decision of the Chair stood as the judgment of the Senate.

3267. When a section is stricken out and a new text inserted, the conferees may incorporate any germane matter.—On March 3, 1915,[2] the conference report on the agricultural appropriation bill was under consideration in the House, when Mr. Robert L. Henry, of Texas, submitted a point of order that the report contained matter not in dispute between the two Houses.

Mr. Henry based his point of order on the provision for a joint farm-credits committee incorporated in the conference report in lieu of a provision for a rural-credits bureau carried in a Senate amendment stricken out by the House.

The Speaker [3] overruled the point of order as follows:

The point of order raised by the gentleman from Texas has been repeatedly passed on. In the first place it seems to the Chair that the only correct way in which to regard the matter now in controversy is to consider this rural-credit amendment offered by Senator McCumber as a separate subject, distinct from the bill proper. What happened about that was this: The Senate inserted the McCumber amendment, treating the whole subject of rural credits, and it was sent over to the House in that form. The House struck out the whole of the McCumber amendment. That is, it agreed to a substitute for the entire McCumber amendment. It did not leave a single line or word of the McCumber amendment. That put it exactly in the same situation as if everything after the enacting clause of a bill was struck out. And it has been held so often and so far back and by so many Speakers that, where everything after the enacting clause is struck out, the con-

[1] Charles G. Dawes, of Illinois, Vice President.

[2] Third session Sixty-third Congress, Record, p. 5469.

[3] Champ Clark, of Missouri, Speaker.

ferees have carte blanche to prepare a bill on that subject, it seems to the Chair that question is no longer open to controversy. The Chair will refer to just one or two of the rulings.

The ruling on the point made on the shipping bill has nothing to do with this bill, because the situations are not the same. The point raised there was the matter of time, which had never been passed upon before so far as the Chair knows; but it involved the principle of the higher and lower rates in a bill, or the larger and smaller amounts in a bill. In the shipping-bill contest it happened to be the question of time that was in controversy.

The case as to the immigration bill, which was passed on some three or four Congresses ago, is precisely on "all fours" with this. In paragraph 6424 of Hinds' Precedents, volume 5, the syllabus, to use the legal phrase, is this:

"Where the disagreement is as to an amendment in the nature of a substitute for the entire text of a bill, the managers have the whole subject before them and may exercise a broad discretion as to details."

The only change I would make in that language is to say that they have carte blanche on the subject.

"A point of order against a conference report should be made or reserved after the report is read and before the reading of the statement. On February 18, 1907, Mr. William S. Bennet, of New York, submitted the report of the managers of the conference on the bill (S. 4403) entitled 'An act to amend an act entitled, "An act to regulate the immigration of aliens into the United States," approved March 3, 1903.'"

Before the report was read, Mr. John L. Burnett, of Alabama, proposed to reserve a point of order.

The report having been read, a point of order was made by Mr. Burnett, who insisted that the managers had exceeded their authority in inserting the following provisions:

"Provided further, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possession or from the Canal Zone."

And the Speaker ruled that that provision was in order.

Section 6425, the syllabus:

"A Senate amendment having provided an appropriation to construct a road, and conferees having reported in lieu thereof a provision for a survey, it was held that the provision was within the differences."

The only thing for the Speaker to pass on at this juncture is whether or not the conferees exceeded their authority. Not only by the decision of the present Speaker on two different occasions, but by half a dozen of his predecessors, it beings this provision which the conferees brought in here within the rule, and the point of order of the gentleman from Texas is overruled.

3268. On March 15, 1922,[1] Mr. William R. Wood, of Indiana, called up the conference report on the independent offices appropriation bill.

The report having been read, Mr. Frederick W. Dallinger, of Massachusetts, raised the question of order that the conferees had gone beyond the differences committed to them, in providing a limitation of $100,000 beyond which contracts must be awarded to the lowest bidder, whereas the original bill made no limitation and the Senate amendment fixed a limit of $5,000.

The Speaker pro tempore,[2] ruled:

The gentleman from Massachusetts makes the point of order that the conferees exceeded their authority in agreeing to the language in lieu of Senate amendment No. 30. It will be noticed that

[1] Second session Sixty-seventh Congress, Record, p. 4370.

[2] Joseph Walsh, of Massachusetts, Speaker pro tempore.

the original provision of the bill contained no limitation whatever providing for the purchase, repair, or reconditioning of any vessel, commodity, article, or thing on the part of the Government. The Senate struck out all of the language of the original House provision and inserted an amendment which required the reconditioning or repairs in excess of $5,000 to be done in Government yards under certain conditions. The conferees have agreed to substantially that language except that they have stricken out "$5,000" and inserted "$100,000." In the view of the Chair the whole controversy before the conferees was whether there should be a limitation upon the amount of the repairs, and if so, what the limitation should be; in other words, it was between $5,000 worth of repairs and no limit whatever.

This point has heretofore arisen, and a discussion occurred on March 3, 1915, Sixty-third Congress, third session, Record, page 5469, when Speaker Clark ruled, in passing upon a point of order raised against the conference report on the agricultural appropriation bill, that where the House struck out all of the Senate amendment, not leaving a single line or word of that provision, and substituting a new amendment, it put it in exactly the same condition as where the Senate or House struck out all after the enacting clause of a bill and inserted a new bill entirely. The Speaker then ruled that the conferees had carte blanche in drafting new language and inserting new provisions. He cited as a precedent paragraph 6424 of Hinds' Precedents, volume 5, the syllabus of which is, that—

"Where the disagreement is as to an amendment in the nature of a substitute for the entire text of a bill, the managers have the whole subject before them and may exercise a broad discretion as to details."

It seems to the Chair that this particular case is analogous to that situation, and that the conferees were authorized either to agree to the provisions without any limitation whatever, or to a limitation of $5,000, or to any limitation between that and no limitation whatever, and that the point of order that they have exceeded their authority is not well taken. The Chair therefore overrules the point of order.

3269. The House provision for the regulation of railway capitalization being stricken out by the Senate, which substituted nothing in lieu thereof, a provision inserted by the conferees authorizing the President to appoint a commission to investigate the subject was held to be within the differences between the two Houses.

On June 18, 1910[1] when the conference report on the bill (H. R. 17536) to create a commerce court, was called up for consideration in the House, Mr. Charles L. Bartlett, of Georgia, made the point of order that the conferees had exceeded their authority. Mr. Bartlett based his point of order on the provision authorizing the President to appoint a commission to investigate railway capitalization, which had been incorporated in the bill in lieu of a provision to regulate railway capitalization, carried in the House bill but stricken out by the Senate.

The Speaker[2] said:

The bill as it passed the House, section 16, provided for a new section to the interstate commerce law.

"That no railroad corporation which is a common carrier subject to the provisions of this act as amended shall hereafter issue for any purpose connected with or relating to any part of its business governed by the provisions of this act as amended any stocks, bonds, notes, or other evidences of indebtedness to an amount exceeding that which may from time to time be reasonably necessary

[1] Second session Sixty-sixth Congress, Record, p. 8471.

[2] Joseph G. Cannon, of Illinois, Speaker.

for the purpose for which such issue of stocks, bonds, notes, or other evidences, of indebtedness may be authorized."

Then it continues with provision for the amount of the securities to be thus issued, and so forth. That is sufficient to show the House provisions. The Senate struck out by way of amendment to the House bill all after the enacting clause, and in its substitute made no mention of section 16. The House disagreed to the Senate amendment, and the whole matter went to conference. The conferees in settlement of the differences between the House and the Senate as to this matter agreed to the following:

"SEC. 16. That the President is hereby authorized to appoint a commission to investigate questions pertaining to the issuance of stocks and bonds by railroad corporations subject to the provisions of the act to regulate commerce."

Now, the question arises whether the agreement between the conferees was legitimately within the differences between the House and the Senate.

The Chair has a precedent, which he will ask the Clerk to read.

The Clerk read section 6425 of Hinds' Precedents, and the Speaker concluded:

The Chair believes in principle that the ruling of the Chair in the case just read by the Clerk was correct. The greater does include the less. The proposition in the House bill to regulate the capitalization of railways, their stocks and bonds, constitutes, in this case, the greater proposition. The Senate having disagreed, and the whole matter being in conference and an agreement having been reached covering and setting the differences, the provision for a commission to investigate the subject touching stocks and bonds and capitalism of railways, it seems to the Chair, is clearly in order and within the differences between the two Houses, and therefore the Chair overrules the point of order.

3270. Mere changes in phraseology without material alteration of the subject matter are not sufficient to render a conference report subject to the point of order that the conferees have exceeded their authority.

In changing a provision relating to "grain" to a provision relating to "nonperishable agricultural commodities" conferees were held to have gone beyond the differences committed to them.

Instance wherein a conference report rejected on a point of order was considered under a special order from the Committee on Rules.

Form of resolution for consideration of conference report invalidated on point of order.

On May 8, 1933,[1] Mr. Marvin Jones, of Texas, called up the conference report on the bill (H. R. 3835) to relieve the existing national economic emergency by increasing agricultural purchasing power.

Mr. Edward W. Goss, of Connecticut, made the point of order that the conferees had exceeded their powers in that they had modified the following provision of Senate amendment No. 17:

The making of any such legal agreement shall not be held to be a violation of any of the antitrust laws of the United States—

to read:

The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States.

[1] First session Seventy-third Congress, Record, p. 3031.

The Speaker [1] overruled the point of order and said:

Senate amendment 17 has reference to making legal agreements. The conference committee leaves out the word "legal" and inserts that agreements shall be deemed to be lawful. The Chair does not see any difference, and the Chair overrules the point of order.

Mr. Goss submitted the further point of order that, while Senate amendment No. 14 provided—

Under regulations of the Secretary of the Interior requiring adequate facilities for the storage of grain on the farm, inspection—

the conference report read:

Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any nonperishable agricultural commodity on the farm.

The Speaker sustained the point of order and held:

It seems to the Chair that the striking out of the word "grain" and the substitution therefor of the words "nonperishable agricultural commodities" by the conferees broadens the scope of the Senate amendment. The Chair thinks that the conferees did not confine themselves to the matter in disagreement but attempted to incorporate new matter into Senate amendment 14. Therefore the Chair sustains the point of order against the conference report.

On the following day,[2] Mr. Arthur H. Greenwood, of Indiana, called up the following resolution from the Committee on Rules:

Resolved, That notwithstanding the previous action of the House relative to the conference report on the disagreeing votes of the two Houses on the bill H. R. 3835, immediately upon the adoption of this resolution the House shall consider said conference report without the intervention of points or order against the same.

The resolution was agreed to, and thereupon Mr. Jones again called up the conference report ruled out on the previous day, and after consideration it was agreed to in the form in which originally presented.

3271. The practice of the House does not countenance the reservation of points of order against a conference report when presented for printing, and questions of order are not entertained until the report has been read for consideration.—On April 15, 1920,[3] Mr. William R. Wood, of Indiana, submitted the conference report on the legislative, executive, and judicial appropriation bill for printing under the rule.

Mr. John N. Garner, of Texas, being recognized to submit a parliamentary inquiry, said that recently a number of Members had risen when conference reports were presented for printing and reserved all points of order as when appropriation bills were reported. Mr. Garner inquired if it was necessary to rise and make such reservation of points of order when conference reports were filed.

The Speaker [4] held that the practice of reserving points of order against conference reports when presented for printing was unwarranted, as the proper time to raise a question of order against a conference report was after the report had been read for consideration and before the reading of the statement.

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[1] Henry T. Rainey, of Illinois, Speaker.

[2] Record, p. 3060.

[3] Second session Sixty-sixth Congress, Record, p. 5688.

[4] Frederick H. Gillett, of Massachusetts, Speaker.

3272. Under the former Senate practice, a conference report was not subject to the point of order that the conferees had exceeded their authority.

Instance wherein the Vice President expressed the opinion that the practice of the Senate should be amended by making conference reports subject to the point of order that conferees had exceeded their authority by incorporating matters not in disagreement between the two Houses.

The adoption of the present rule [1] and practice of the Senate requiring conferees to limit their reports to matters in disagreement between the two Houses.

On February 12, 1917,[2] in the Senate on motion of Mr. Henry F. Ashurst, of Arizona, by unanimous consent, the conference report on the Indian appropriation bill was taken up for consideration.

Mr. Charles Curtis, of Kansas, raised the question of order that the conferees had inserted in the conference report matter not in disagreement between the two Houses.

The Vice President [3] declined to entertain the point of order and said:

> The Chair has been observing these conference reports for four years, and it is not an unfair statement to say that quite a good deal of the important legislation of the Congress of the United States is transacted in the conference committees, and not in the Senate and the House of Representatives of the United States. The Chair understands the rule to be that the conferees have no right in conference to insert in the report which they make or in the agreement into which they enter anything except matters which were in dispute between the two Houses. Nevertheless, it is constantly being done by conference committees. It has, however, been the settled rule of the Senate that a point of order could not be made to a conference report, the sole question being whether the report shall be concurred in or whether it shall be rejected and sent back to conference again, with or without instructions.

Vice President Hobart did not decide the point of order, but submitted it to the Senate, and said that the Senate should settle it by either agreeing or disagreeing to the conference report.

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[1] On March 8, 1918, Second session Sixty-fifth Congress, Record, p. 3180, the Senate adopted the following rule:

"Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses. If new matter is inserted in the report, or if matter which was agreed to by both Houses is stricken from the bill, a point of order may be made against the report, and if the point of order is sustained, the report shall be recommitted to the committee of conference."

This amendment to the rules was introduced by Mr. Charles Curtis, of Kansas, and adopted on March 8, 1918.

It became necessary to make this change in the Senate's rules in order to control legislation by conference committees.

The requirement that a conference report be accepted in its entirety or rejected led to the practice by conference committees of rewriting legislation in conference. Often important changes in existing law or new legislation proposals which had not been debated, considered, or voted upon in either the House or Senate were incorporated in conference reports. The Senate or the House could by a majority vote reject a conference report in which the conferees had attempted to write new legislation, but frequently near the end of a session it was a choice of accepting the conference report or of having no legislation at all. The rule was adopted to remedy this defect. With the adoption of this rule the practice of the two Houses became identical.

[2] Second session Sixty-fourth Congress, Record, p. 5064.

[3] Thomas R. Marshall, of Indiana, Vice President.

Senator Lodge, when he occupied the chair, said that the point of order should be decided by the Senate, but it was not ruled upon, the Senate having rejected the conference report.

This is not a full and complete conference report. If the report be disagreed to, as it has been reported, the question can then go back to conference, either with or without instructions on the part of the Senate.

The Vice President added:

The Chair believes, however, that at some time, if the insertion of new matter does not stop, it will be the duty of a Presiding officer to sustain a point of order; and, although it is opposed to all the precedents of the United States Senate, the Chair proposes to reserve the right at some time in the future to sustain the point of order and test the opinion of the Senate upon that practice; but in view of the condition of this particular case, and in view of the fact that the Chair believes he is ruling in accordance with the precedents, he is now overruling the point of order of the Senator from Kansas.

3273. Under a recent rule of the Senate, a conference report ruled out of order on the ground that it inserted matter not committed to the conference and omitted matter agreed to by both Houses, was recommitted to the committee of conference.

On August 25, 1922,[1] the Senate resumed consideration of the conference report on the bill (H. R. 9103) for the appointment of additional district judges for certain courts of the United States.

The Presiding Officer[2] invited further discussion of the point of order previously made by Mr. John K. Shields, of Tennessee, that the conferees had eliminated matter agreed to by both Houses and had inserted matter not committed to them by either House.

Ater debate, the Presiding Officer rules:

The rule that is invoked reads as follows:

"Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses. If new matter is inserted in the report or if matter which was agreed to by both Houses is stricken from the bill, a point of order may be made against the report, and if the point of order is sustained, the report shall be recommitted to the committee of conference."

This rule was adopted to meet a practice of the Senate that had become an abuse and to which objection had often been made. It is clear and definite in the limits which it imposed upon the action of the conferees. It has not been often invoked since its adoption, but when invoked it is controlling upon the Senate. Whether the objection made is technical or substantial, if it comes within the terms of the rule, no discretion is left in the Presiding Officer.

The first objection to this conference report is based upon the provision in the House bill that reads:

"The Attorney General shall, upon request of the Chief Justice, report to said conference on matters relating to the business of the several courts of the United States, with particular reference to causes or proceedings to which the United States may be a party, together with such recommendations or requests as may be deemed proper. The Attorney General shall not be a member of said conference."

That is the provision placed in the bill by the House. As the bill passed the Senate it contained this provision:

"The Attorney General shall, upon request of the Chief Justice, report to said conference on matters relating to the business of the several courts of the United States, with particular reference to causes or proceedings in which the United States may be a party."

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[1] Second session Sixty-seventh Congress, Record, p. 11766.

[2] Mr. Wesley L. Jones, of Washington, Presiding Officer.

That language is identical with the language of the House, as far as it goes, and the Chair thinks that it states a distinct matter, or proposition, and that the further provisions in the House bill—"together with such recommendations or requests as may be deemed proper" and "the Attorney General shall not be a member of said conference"—are in substance and statement two additional matters, and it seems to the Chair that the first matter stated in the House provision was adopted in the bill as it passed the Senate and comes clearly within the prohibition of the rule against omitting matter adopted by both Houses.

The next objection is based upon this language. The House bill provided:

"Said judges shall be residents of the districts for which appointed and shall receive the same salary and allowances and shall possess, exercise, and perform the same jurisdiction, powers, and duties as is now provided by law."

The Senate provision is:

"Every judge shall reside in the district or circuit or one of the districts or circuits for which he is appointed and shall devote his time to the duties of his office and shall not engage in any other employment for which he receives compensation, and for offending against the provisions of this section shall be deemed guilty of a high misdemeanor."

The Chair thinks there are several independent matters contained in each one of these provisions. There is the provision, "Said judges shall be residents of the districts for which appointed." That is a distinct matter. The Senate bill provided:

"Every judge shall reside in the district or circuit or one of the districts or circuits for which he is appointed."

These two propositions are identical in substance and almost in language. They have nothing to do with the qualifications of the judge or with the salary which he shall receive. In other words, both Houses provided that each judge should reside in his district or circuit.

The point is made that this is covered by existing law. That may be true, and yet the Senate and the House both seemed to think that a provision of this sort was necessary, and inserted it. The rule says that a matter passed upon by both Houses shall not be eliminated. No discretion is left to the conferees as to whether it is covered by existing law or not.

It seems to the Chair that the point of order on that matter must be sustained.

The next proposition is with reference to the provision relating to the middle district of Tennessee. The House made provision for an additional judge for this district. It was conceded that under existing law the present judge is the judge for the eastern and the middle districts of Tennessee. The Senate made no provision for an additional judge for the middle district. The provision as finally agreed to and submitted by the conferees takes away the jurisdiction given to the present judge by existing law in the middle district and limits his jurisdiction to the eastern district.

The question of limiting the jurisdiction of the existing judge was not submitted to either House; neither House gave it any consideration whatever; and the Chair believes it to be new matter in the conference report and prohibited by the rule.

The Chair sustains the point of order on all three grounds.

The Presiding Officer having concluded his ruling, Mr. Albert B. Cummins, of Iowa, as a parliamentary inquiry, asked what disposition would be made of the conference report.

The Presiding Officer replied:

The rule says that when a point of order is sustained, the report shall be recommitted to the conference.

The Chair is informed that the House has not yet acted upon the conference report. If that is the case, there is still a conference committee. The clerk at the desk informs the Chair that the House has not yet acted on the report.

The Chair is of the opinion that the conference committee is still in existence and that this report will go back to the conference committee.

3274. A question being raised in the Senate as to whether conferees had exceeded their authority, it was held that conferees might include in

their report provisions from either the Senate or House bills, and the Chair in passing on points of order was not authorized to take into consideration the effect of such provisions in conjunction with provisions inserted from the bill passed by the other House.—On September 16, 1922,[1] on motion of Mr. Porter J. McCumber, of North Dakota, the Senate proceeded to the consideration of the conference report on the bill (H. R. 7456), the tariff bill.

Mr. F. M. Simmons, of North Carolina, made the point of order that the conferees had exceeded their jurisdiction. He submitted that the House bill prescribed rates on a basis of American valuation, and conferred on the President no powers to proclaim or modify valuation; that the Senate provision provided rates on a basis of foreign valuation and gave the President power to increase or decrease duties; and therefore the conferees in adopting foreign valuation but conferring on the President power to proclaim American valuation, had exceeded the limits imposed by the disagreement of the two Houses.

The President pro tempore[2] took the question under advisement, and on September 18,[3] delivered his opinion as follows:

The point of order made by the Senator from North Carolina is as follows:

"I wish to make a point of order against the report. I think the conferees have exceeded their authority in the matter of authorization to the President to proclaim the so-called American valuation."

The Record shows that the House bill adopted what is known as the American valuation as the basis for its ad valorem duties, and gave no authority to the President to change the duties prescribed in the bill. The Senate bill adopted what is known as the foreign valuation as the basis of ad valorem duties and conferred upon the President the power to increase or decrease them 50 percent, if found necessary, in order to equalize the difference in the cost of production in this country and in foreign countries.

Under the Senate bill, paragraph (a), section 315, and with respect to ad valorem duties, the effect of establishing a foreign valuation necessarily required the President to use that plan in reaching his conclusions. But paragraph (b) of section 315 enlarged his power and permitted him to use the American valuation upon two paragraphs, if he found that such valuation was necessary in order to make the duties measure the difference in the cost of production at home and abroad.

As already stated, the House bill adopted American valuation and the Senate bill foreign valuation as the basis for ad valorem duties. It is in this difference, if at all, that the jurisdiction of the conferees to make the change respecting the powers of the President must be found. Disregarding for the moment the sections giving authority to increase or diminish duties under certain conditions, it will not be questioned that the conferees could lawfully have agreed that the American valuation should apply to certain of the paragraphs in the dutiable list and the foreign valuation to other paragraphs. Nor can it be doubted that the Senate conferees would have been within their jurisdiction had they receded from the Senate amendment to the Senate bill with regard to valuations and accepted the House plan of valuation. Furthermore this could have been done even though the Senate percentages of duties had been retained throughout.

It is commonly believed that if this course had been pursued the duties actually to be paid would, in many instances, be much higher than would be paid under either the Senate or the House bill, and this may be true even though paragraph (b) of section 315 of the conference bill forbids an increase in the rate; but in ruling upon a point of order the Chair can not take judicial notice of that fact, if it be a fact. For aught the Chair knows from the record upon which its

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[1] Second session, Sixty-seventh Congress, Record, p. 12753.

[2] Albert B. Cummins, of Iowa, President pro tempore.

[3] Record, p. 12795.

ruling must be founded, if the proposed enactment becomes a law, the foreign valuation of any given article may be as high than the American valuation of the same article. As a Senator I may entertain a certain belief upon the matter and vote accordingly, but as the Presiding Officer of the Senate, acting in a judicial capacity, I am without knowledge upon the subject.

With these preliminary observations, which seem to the Chair indisputable, we approach the vital inquiry which may be thus concretely stated: In order to reach a settlement of the differences respecting the plan of valuation, could the House conferees rightly say to the Senate conferees, "We will recede from the American-valuation plan, accept the foreign-valuation plan, and accept the authority of the President to modify duties, provided you will agree to extend the authority of the President so that he may employ our plan upon the whole dutiable list whenever he finds it necessary in order to equalize the difference in the cost of production in this country and in foreign countries"; and could the Senate conferees, acting within their lawful powers, accept the proposal?

The Chair appreciates the consequences which follow an affirmative answer to this question, but these consequences inhere in the nature and extent of the difference between the two Houses relating to the plan of valuation. If the Senate conferees could accept American valuation as a whole—and this is not denied—it seems clear that they could accept a qualified and limited use of that plan by the President. Moreover, if the Senate conferees had accepted American valuation throughout and made no change whatever in section 315, the Chair is of the opinion that the President would have had precisely the same power that he will have under the conference bill.

It is quite impossible to separate valuation from presidential authority in this measure, and the Chair firmly believes that the change which the conferees have wrought in the bill, so far as the question we are discussing is concerned, was within their jurisdiction and that it must be dealt with by the Senate in its action upon the question of agreeing or disagreeing to their report. The point of order is overruled. The question is upon agreeing to the report of the conferees.

3275. A conference committee may not include in its report new items, constituting in fact a new and distinct subject not in difference, even though germane to questions in issue.

A conference report being ruled out in the Senate on a point of order, was recommitted under the Senate rules to the committee of conference.

Interpretation of the term "new matter" as used in the Senate rule.

On February 17, 1925,[1] the Senate resumed consideration of the report of the committee on conference on the disagreeing votes of the two Houses on the bill (H. R. 518) to authorize and direct the Secretary of War, for national defense in time of war and for the production of fertilizers and other useful products in time of peace, to sell or lease to Henry Ford certain plants owned by the Government at Muscle Shoals, Ala.

During debate, Mr. George W. Norris, of Nebraska, raised the question of order that the conferees had included in their report a new item relating to the employment by the President of agents to carry out purposes of the act; a new item relative to the rental to be paid for Dam No. 2; a new item relating to the production of nitrogen; and a new item relative to construction work on Dam No. 3.

Subsequently, on the same legislative day,[2] but on the calendar day of February 20, the President pro tempore [3] ruled:

The Chair recognizes that the points of order made by the Senator from Nebraska present questions, which are not only exceedingly important but exceedingly difficult and upon which

[1] Second session Sixty-eighth Congress, Senate Journal, p. 210; Record, p. 4123.

[2] Journal, p. 215; Record, p. 4244.

[3] Albert B. Cummins, of Iowa, President pro tempore.

there is an opportunity for wide differences of opinion. These differences will never be settled finally until they are settled by a decisive vote of the Senate itself. In the ruling the Chair is about to make, the text of the House bill is entirely disregarded, for, in the opinion of the Chair, it can not be fairly claimed that the two House in their original action agreed upon any point or upon any thing. There were, of course, some features of similarity, but these features of similarity were so connected with other consideration and so influenced by other provisions that the Chair is forced to the conclusion that the jurisdiction of the conference committee was neither expanded nor limited by anything contained in the original House bill as compared with the Senate bill. This means that, in the judgment of the Chair, the points of order must depend upon a comparison of the Senate bill with the report of the conference committee. It is urged on the one hand that when so compared "now matter" will be found in the conference report and that, therefore, the report is objectionable under Rule XXVII. It is urged upon the other hand that the phrase "new matter" does not prohibit the incorporation in a conference report of matter which is germane to the subject or subjects of the bill.

The subjects of the Senate bill were—

First. The disposition by lease of certain specified property belonging to the Government situated at or near Muscle Shoals, Ala.

Second. In the event of a failure to lessee or in the event of a cancellation of the lease, the operation of the property so leased together with other property by a Government-owned corporation.

There can be no doubt that the changes made in the Senate bill in conference are germane in a broad, general sense to the subjects dealt with in the Senate bill, and if that is the test to be applied the points of order must be overruled.

The Chair, however, finds itself unable to interpret the second paragraph of Rule XXVII with the breadth contended for by those who seek to sustain the conference report. This paragraph of Rule XXVII to which reference has been made is as follows:

Second. In the event of a failure to lease or in the event of a cancellation of the lease,

"Conferees shall not insert in their report matter not committed to them by either House, nor shall they stricken from the bill matter agreed to by both Houses. If new matter is inserted in the report of if matter which was agreed to by both Houses is stricken from the bill, a point of order may be made against the report, and if the point of order is sustained the report shall be recommitted to the committee of conference.

The Chair has already observed there was nothing agreed upon by both Houses, and that part of the rule will not be further considered. There remains to be considered the prohibition that "conferees shall not insert in their report matter not committed to them by either House" and the requirement that "new matter" must not be inserted in a report. What is "new matter"? It is quite impossible to define this phrase with that accuracy and precision which will make any rule announced applicable to the infinite variety of cases that will arise. It may be remarked, however, that some three of four years after the adoption of paragraph 2 of Rule XXVII the Senate amended Rule XVI relating to the consideration of appropriation bills, and the amendment provided:

"The Committee on Appropriation shall not report an appropriation bill containing amendments proposing new or general legislation, and if an appropriation bill is reported to the Senate containing amendments proposing one or general legislation a point of order may be made against the bill, and if the point is sustained the bill shall be recommitted to the Committee on Appropriations."

It has seemed to the Chair that the words "new matter" as found in Rule XXVII and "new legislation" as found in Rule XVI must mean practically the same thing. The fact of the identity of these two phrases makes it all the more important that the ruling upon the points of order now before the Senate shall be correct. Without attempting to define "new matter," the Chair is of the opinion that it was intended, when this paragraph of the rule was adopted, to restrict the general parliamentary law as frequently announced by the Speaker of the House of Representatives. The House knew, when it sent the bill to conference, that the rule of the Senate forbade the insertion of "new matter" in a conference report, and the Chair assumes it adopted that plan for bringing the House into agreement with full understanding of the limitation placed upon the Senate conferees.

The Chair does not desire to be understood as holding that every change made in the Senate bill by the conference report constitutes "new matter." It is of the opinion that in order to bring the change within the spirit of Rule XXVII "new matter" must be of substantial import; that is to say, a change affecting in a substantial way the plan proposed in the Senate bill.

It is the judgment of the Chair that many such changes appear in the conference report. The Chair has been in some doubt with respect to the propriety of pointing out these changes which, in the judgment of the Chair, bring the conference report under the prohibition of the rule. He has, however, concluded not to name the specific instances in which, as viewed by the Chair, the rule has been violated.

The Chair has been in grave doubt with regard to that matter. He has before him at the present moment a half dozen or more instances in which, in his judgment, Rule XXVII was violated in the conference report. The points of order is so far as they challenged the insertion of new matter in the conference report are sustained.

From the decision of the Chair, Mr. Oscar W. Underwood, of Alabama, appealed to the Senate. On February 23,[1] (Legislative day of February 17) the question was taken:

Shall the decision of the Chair stand as the judgment of the Senate?

when there were yeas 45, nays 41, and the question was decided in the affirmative. So the decision of the Chair was sustained, and the conference report was referred to the committee of conference.

3276. Where one House strikes out all of a bill of the other after the enacting clause and inserts a new text and the differences over this substitute are referred to conference, the managers have a wide discretion in incorporating germane mattes.

While the practice of both House and Senate prohibits the elimination of provisions agreed to by both Houses, the language must be identical and any deviation of the two texts abrogates the rule.

On February 27, 1919,[2] the Senate took up the consideration of the conference report on the bill (H. R. 13274) providing for the validation of war contracts.

The report being read, Mr. Kenneth D. McKellar, of Tennessee, made the point of order that the conferees had exceeded their authority of eliminating matter passed by both Houses.

In support of his contention, Mr. McKellar cited Rule XXVII of the Senate, reading:

"Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses."

Mr. McKellar then called attention to the proviso in the bill, as passed by the House, reading as follows:

"And provided further, That the names of such contractors and the amounts of such partial or final settlements shall be filed with the Clerk of the House, for the information of Congress, and printed in the Congressional Record or in the Official Bulletin or as a public document 10 days before confirmation and payment is authorized upon such contracts."

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[1] Journal, p. 224; Record, p. 4403.

[2] Third session, Sixty-fifth Congress, Record, p. 4412.

This provision, he contended, was substantially similar to the following proviso incorporated in the bill as it passed the Senate:

And provided further, That the names of such contractors and the amounts of such partial or final settlements shall be filed with the Clerk of the House, for the information of Congress, and final settlements shall be filed with the Clerk of the House, for the information of Congress, and printed in the Congressional Record or as a public document within 10 days after such confirmation.

The Vice President [1] overruled the point of order as follows:

The Chair has heretofore gone to great lengths in sustaining the rule of the Senate with reference to the insertion of new matter and the omission of matter agreed to by the two Houses. In an early opinion after this rule was adopted, the point of order was sustained where there was a section in the original bill of the House and a section on the original bill of the Senate which were identically the same. That ruling went further than the precedents than the precedents of the House of Representatives have been from the days of Speaker Colfax down. Those rulings are uniformly to the effect that where the Houses passes a bill and the Senate strikes out all after the enacting clause and passes another bill, when it goes to conference the matter is practically in the hands of the conferees to report such a bill, germane to the subject of the conference, as the conferees may think proper, and then it is for the two Houses to say whether or not they will adopt the conference report. As heretofore stated, however, the Chair, being extremely desirous of sustaining this rule of the Senate, did sustain a point of order under circumstances of a bill enacted by the House, all after the enacting clause stricken out, and a new bill inserted in the Senate, where in both bills there was a section identical in language.

Now, let us see where we are.

This is a proviso contained in each bill. It is not identical in the two bills at all, beyond the fact that each required the names of the contacts and the amounts of partial or final settlements to be filed with the House for the information of Congress. There it ends, so far as the terms are identical in the two bills. After that, in the House bill it is to be printed in the Congressional Record or in the Official Bulletin or as a public document 10 days before confirmation and payment as authorized upon such contract. The Chair is inclined to think that the important thing in the bill was the requirement that it be printed somewhere 10 days before confirmation and payment. In the Senate bill it is to be printed in the Congressional Record or as a public document within 10 days after such confirmation.

The Chair thinks there were just about 20 days in controversy before the conferees, and that they had a right to strike the proviso out. The Chair overrules the point of order. If Senators desire either provision retained, they can vote to reject the conference report for that reason.

3277. Under the later practice of the Senate, the Chair rules out of order a conference report incorporating matter not in disagreement between the two Houses.

When held to be in violation of the Senate rule prohibiting the incorporation of new matter, a conference report is automatically recommitted to the committee of conference.

On March 13, 1918,[2] on motion of Mr. Ellison D. Smith, of South Carolina, the Senate resumed consideration of the conference report on the bill (S. 3752) to provide for the operation of transportation systems while under Federal control.

Mr. Joseph S. Frelinghuysen, of New Jersey, made the point of order that the conferees, in contravention of the recently adopted rule of the Senate, had inserted new matter in the conference report.

In debate it developed that the original Senate bill carried this proviso:

That nothing in this act shall be construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation.

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[1] Thomas R. Marshall, of Indiana, Vice President.

[2] Second session Sixty-fifth Congress, Record, p. 3418.

The bill substituted by the House included the proviso as drafted by the Senate and added this language:

or the lawful police regulations of the several States, except wherein these regulations may affect the transportation of troops, war materials, or Government supplies, the regulation of rates, the expenditure of revenues, the addition to or improvement of properties, or the issue of stocks and bonds.

The conference report included the proviso as it appeared in the House substitute, but also incorporated this additional proviso:

Provided, however, That no State or subdivision thereof or the District of Columbia shall levy, assess, or collect an amount of taxes from railroad property within the State or subdivision thereof or the District of Columbia, while under Federal control, in excess of the ratio which the taxes derived from railroad property bore to the total taxes of such State or subdivision thereof or the District of Columbia for the year previous to Federal control.

Mr. Frelinghuysen contended that the additional proviso carried new matter not in dispute between the two Houses and was in violation of the Senate rule prohibiting the incorporation of matter no in disagreement.

The Vice President [1] held:

The bill going to conference, the House having stricken out the Senate bill, the entire subject of taxation was before the conferees, and they could change it in any way they pleased, so long as it was germane to the bill. But, there is no doubt that the proviso added totally changed both the Senate and House text and limited the power of the State to impose taxation. The Chair sustains the point of order.

To this ruling Mr. Smith excepted and, the question being taken on the appeal, the yeas were 51, the nays were 23, and the ruling of the Chair was sustained.

The result of the vote being announced to the Senate, the Vice President said:

The conference report is rejected on the point of order and recommitted to the committee of conference.

Mr. Smith questioned whether under the rule the recommitment of conference reports ruled out on point of order was automatic.

The Vice President read the rule [2] to the Senate and announced:

The report is automatically recommitted to the committee of conference.

3278. On April 18, 1918,[3] the Senate, on motion of Mr. Henry F. Ashurst, continued debate on the conference report on the Indian appropriation bill under consideration on the previous day.

Mr. Charles Curtis, of Kansas, resumed discussion of the pending point of order which he had submitted when the report was last under discussion. He argued that the action of the managers in striking from the bill the clause "except oil and gas leases" extended the authority of the Secretary of the Interior to lease Indian lands to include oil and gas lands, a subject which neither the House nor the Senate had considered.

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[1] Thomas R. Marshall, of Indiana, Vice President.

[2] Paragraph 2 of Rule XXVII of the Senate.

[3] Second session Sixth-fifth Congress, Record, p. 5240.

The Vice President [1] held that the point of order was well taken and said:

This is not a question as to what the law is or what the law should be, nor is it a question as to what the legislation should or should not be; it is a plain question as to what can be done in this conference report under the rules of the Senate. The Senate adopted an amendment appropriating certain money and providing that no part of that money should be used in forwarding undisputed claims to the department at Washington for approval, but that they might be approved by the superintendent of the Five Civilized Tribes in Oklahoma. The claims, which the Senate provided should not be forwarded to the Interior Department, were agricultural and mineral leases, and the provisions specifically excepted oil and gas leases therefrom. The rule of the Senate recently adopted is that—

"Conferees shall not insert in their report matter not committed to them by either House."

The conferees have now provided that oil and gas leases shall not be sent to Washington for approval by the Secretary of the Interior. That is a plain insertion of new matter by the conferees, and the Chair sustains the point of order.

The conference report is recommitted to the committee of conference.

3279. Where the House had acted on a conference report, thereby discharging its conferees, the Senate being unable to comply with its rule recommitting invalidated conference reports to committees of conference, requested further conference without taking further action on the amendments in disagreement.—On February 24, 1919,[2] in the Senate, Mr. Key Pittman, of Nevada, rising to a parliamentary inquiry, asked what action would be taken by the Senate on the conference report on the bill (S. 2812), the oil leasing bill, which had been ruled out on a point of order on the previous legislative day, the house having agreed to the report and discharged its conferees, and there being no committee of conference to which the report could be referred by the Senate under the rule.

The Vice President [1] held it would be necessary for the Senate to ask further conference with the House in order to secure reappointment of the managers on the part of the House and provide a committee of conference to which the invalidated conference report could be referred under the Senate rule.

In response to a further inquiry from Mr. Pittman, the Vice President also held that no mention of the attitude of the Senate on the amendments in dispute and no request for action on the amendments by the House should accompany the request for conference.

Thereupon on motion of Mr. Pittman, the Senate asked further conference with the House on the disagreeing votes of the two Houses on the bill, and the Vice President reappointed the original managers on the part of the Senate.

3280. Conferees having reported tariff rates not in disagreement, the Vice President held them subject to a point of order and recommitted the conference report to the committee of conference.

Conferees appointed for a further conference on matters remaining in disagreement after the adoption of a first conference report have no jurisdiction over differences composed in the previous report.

Contrary to the practice in the House, questions of order against conference reports may be raised in the Senate at any time before the report is agreed to.

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[1] Thomas R. Marshall, of Indiana, Vice President.

[2] Third session Sixty-fifth Congress, Record, p. 4114.

In the Senate it was held that an appeal from a decision of the Chair should be presented at the time the decision is announced and before the intervention of further business.

Where House conferees have not reported and the House has taken no action, recommitment of a conference report by the Senate was held not to require reappointment of conferees by the House.

On May 27, 1930,[1] the Vice President laid before the Senate the second conference report on the disagreeing votes of the two Houses on certain amendments to the tariff bill.

Mr. Alben W. Barkley, of Kentucky, inquired when it would be permissible to submit points of order against the report.

The Vice President held that questions of order against a conference report could be raised at any time before the report was agreed to.

After further debate, Mr. Barkley made the point of order that the managers had exceeded their jurisdiction by writing into their report the flexible provisions which had not been considered by either House.

The Vice President[2] ruled:

The Chair recalls that many complaints were made years ago in regard to the action of conferees in inserting new matter, legislative in character, in reports submitted by them. The present occupant of the Chair proposed the following rule to cure the practice then at times indulged in, and it was embodied in Rule XXVII of the Standing Rules of the Senate:

"Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike form the bill matter agreed to by both Houses. If new matter is inserted in the report, or if matter which was agreed to by both Houses is stricken from the bill, a point of order may be made against the report, and if the point of order is sustained, the report shall be recommitted to the committee of conference."

The Chair is of the opinion that the following language in the conference report is clearly new matter:

"In the event the President makes no proclamation of approval or disapproval within such 60-day period, the commission shall immediately by order publicly declare such fact and the date of expiration of such period, and the increased or decreased rates of duty and the changes in classification or in basis of value recommended in the report of the commission shall, commencing 10 days after the expiration of such period, take effect with respect to the foreign articles when so imported."

The point of order is sustained.

On June 5,[3] the Senate resumed consideration of the last conference report on the tariff bill, and Mr. Barkley submitted the point of order that the conferees had exceeded their authority by inserting in the paragraph on cheese, in the paragraph on watches, in the paragraph on livestock, and in the paragraph on rayon rates which were not in disagreement between the two Houses.

Mr. Carl Hayden, of Arizona, raised a further point of order against the rates inserted by the conferees in the cattle schedule.

The Vice President sustained the point of order against the rates inserted in the cheese schedules. In the watch and clock schedule, he overruled the point of order as to movements, but sustained it as to unset jewels. He declined to pass on

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[1] Second session Seventy-first Congress, Record, p. 9646.

[2] Charles Curtis, of Kansas, Vice President.

[3] Record p. 10093.

the point of order against the schedules on cherries, on the ground that the Chair was in doubt and it was unnecessary as the report was being recommitted to the committee of conference on other schedules. He sustained the point of order against the schedule on rayon and the point of order against the livestock schedule.

Thereupon, Mr. Reed Smoot, of Utah, moved that the Senate insist on its amendments, ask further conference with the House, and that the Chair appoint conferees on the part of the Senate.

The motion being put and being agreed to, the Vice President continued the original conferees.

On a parliamentary inquiry submitted by Mr. Samuel M. Shortridge, of California, the Vice President held that an appeal from a decision of the Chair must be made immediately following the decision and before further business had been transacted.

In response to a further inquiry by Mr. Shortridge, the Vice President ruled that the decision of the Chair just rendered sustaining the point of order recommitted the second conference report only and did not apply to the first conference report still on the table.

On the same day[1] a message from the Senate was received in the House transmitting the following resolution:

Resolved, That the report of the committee of conference on the disagreeing votes of the two Houses on the various amendments of the Senate to the bill (H. R. 2667) entitled "An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes," upon which the first committee of conference on said bill were unable to agree, which report was presented to the Senate on May 26, 1930, be recommitted to the committee of conference on said bill.

The message having been read, Mr. John N. Garner, of Texas, inquired of the Chair of action on the second conference report affected the first conference report previously considered and whether it would be necessary to reappoint conferees.

The Speaker[2] held conferees appointed for the second conference had no jurisdiction over matters committed to the first conference; that the matters disposed of in the first conference report were no longer in conference so far as the House was concerned, and any attempt on the part of the conferees of the second conference to modify provisions of the first conference report would be subject to a point of order.

The Speaker continued:

As the Chair understands the parliamentary situation, it is this: A point of order was made in the Senate and sustained, based on the flexible tariff provision, in that the conferees had exceeded their jurisdiction. The rule in the Senate in such cases is that where a point of order is made and sustained, the other House not having acted, the conferees remain as conferees, and it is automatically recommitted to the conference committee. In the House, however, the rule is different. Where a point of order is made and sustained, the conferees are retired; but in view of the fact that the House has taken no action, the conferees not having reported any action of the second conference to the House, the Chair thinks that automatically, this action having been taken by the Senate, the existing conferees remain in so far as the second conference is concerned.

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[1] Record, p. 9789.

[2] Nicholas Longworth, of Ohio, Speaker.

3281. A conference report proposing duties beyond the range of rates provided by either House bill or Senate amendments, a point of order was sustained and the report was recommitted.

Conferees reporting tariff rates higher than those provided by bill or amendments were held to have exceeded their authority.

On June 4, 1930,[1] the Senate resumed consideration of the conference report on the bill (H. R. 2667), the tariff bill.

In the course of the consideration of the report, Mr. Alben W. Barkley, of Kentucky, submitted the point of order that the provisions of the report extended beyond the scope of either the bill passed by the House or the amendments proposed by the Senate.

Mr. Barkley pointed out that while in both the bill and the Senate amendments a duty of 10 per cent ad valorem was levied on set and unset watch movement jewels, in the conference report unset jewels were transferred to the clock schedule, where they bore a straight duty of 20 cents each, a duty in excess of that provided by either the House or the Senate.

Mr. Barley further pointed out that although the House bill provided a maximum rate of only 7 cents a pound on cheese, and the Senate amendments levied a maximum rate of but 5 cents a pound, the conference report fixed a duty of 8 cents a pound.

Mr. Barkley also called attention to the rate of 40 cents per pound on rayon carried both in the bill and Senate amendment No. 657, and the increase of the rate in the conference report to 45 cents a pound, a rate beyond the limit set by either House.

Mr. Carl Hayden, of Arizona, submitted the further point of order that while the bill and Senate amendments provided uniformly for the pasturage of domestic cattle across international boundary lines, and agreed on a period of eight months' pasturage without payment of duty on return, the conference report differentiated between provisions for the northern and southern boundaries, and reduced the period of pasturage, without duty on return, to three months.

The Vice President[2] ruled as to the first point of order:

> The House provision, subsection (d) reads as follows:
> "Jewels suitable for use in any movement, etc., 10 per cent."
> The Senate provision reads:
> "All jewels for use in the manufacture of watches, etc., 10 per cent."
> The conference provides:
> "Jewels, unset, suitable for use in any movement"—
> The word "unset" does not appear in the measure as it passed the House, or as it passed the Senate, but was added in conference, thereby creating a new classification of jewels.
> The point of order is sustained.

As to the point of order against the increase in duty on cheese, the Vice President held:

> The rates on cheese as carried in the tariff act are as follows:
> House: Cheese and substitutes therefor, 7 cents per pound.
> Senate: Cheese and substitutes therefor, 8 cents per pound.

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[1] Second session Seventy-first Congress, Record, p. 10022.

[2] Charles Curtis, of Kansas, Vice President.

The conference report: Cheese and substitutes therefor, 8 cents per pound.

It will be seen from the above that the duty on cheese is increased beyond the rates carried in either the House or Senate provisions, therefore this point of order is sustained.

The Vice President sustained the point of order against the rayon schedule, as follows:

The Chair has had submitted quite a number of briefs on the rayon amendments and is thoroughly of the opinion, after most careful consideration, that the conferees exceeded their authority in changing the rates in that schedule and sustains this point of order.

The point of order on live stock was also sustained in the following language:

It seems to the Chair that the conferees exceeded their authority by separating the boundaries and prescribing different time limits from those carried in either the act as it came from the House or as it passed the Senate.

This point of order is sustained.

Thereupon, on motion of Mr. Reed Smoot, of Utah, the Senate insisted on its amendments, asked further conference with the House, and authorized the appointment of conferees on the part of the Senate.

3282. Points of order against a conference report are not entertained until the report has been read, and may not be made after the statement has been read.

Managers of a conference are limited to the differences committed to them and may not inject subjects not within the disagreements between the two Houses.

On October 4, 1919,[1] Mr. Gilbert N. Haugen, of Iowa, called up the conference report on the bill (H. R. 8624) pertaining to rents in the District of Columbia, and the Clerk read the title of the bill.

Mr. Philip P. Campbell, of Kansas, proposing to reserve points of order on the bill, the speaker ruled that points of order could not be entertained until the conference report had read and could not be considered after the reading of the statement.

The reading of the report having been concluded, Mr. James T. Begg, of Ohio, made that point of order that the conferees had gone beyond their jurisdiction by including the subject of rents for land when the differences committed to them concerned only rents for buildings.

After extended debate, the Speaker[2] sustained the point of orders as follows:

The Chair appreciates the importance of sustaining a conference report, and the Chair has been anxious from the beginning to be able, preserving his mental integrity, to rule that this conference report was in order. But preserving the authority of the rules of the House is more important than the inconvenience of sending a bill back to conference, the Chair stated in the beginning of the discussion the difficulty which confronted the Chair, hoping that the difficulty would be met and removed by argument. The Chair regrets to say that that difficulty still confronts him and seems insuperable. The question at issue is whether the conference report has gone beyond the subject matter of the Senate amendment. The Senate amendment dealt with rents, but at the very beginning it practically stated in a definition the precise subject with which it dealt, saying, "The

[1] First session Sixty-sixth Congress, Record, p. 6381.

[2] Frederich H. Gillett of Massachusetts, Speaker.

term 'rental property' means any building or part thereof in the District of Columbia." That seems to the Chair to be the subject of the Senate amendment.

Now the conferees were limited to that general subject. They might diminish it. They might take away from it. But the rule is well settled that the conferees can not introduce any new subject. Anything in connection in the way of procedure referring to the subject matter would be allowed. But the difference between the Senate and the House was that the Senate dealt with buildings or parts thereof, and the House, by disagreeing, refused to deal with anything, so that the conferees were limited in their jurisdiction between legislation affecting buildings and no legislation at all. They could introduce any matter germane to buildings, but they could not go beyond that. They introduced the new subject "land". It seems to the Chair that if the House had not some distinct purpose in view, the word "land" would not have been inserted. It broadens the scope of the Senate amendment by an entirely distinct subject matter: and so the Chair feels constrained to sustain the point of order.

On an appeal from the decision of the Chair by Mr. Ben Johnson, of Kentucky, a motion by Mr. Campbell to lay the appeal on the table was agreed to without division.

3283. On May 7, 1920.[1] the House had under consideration the conference report on the diplomatic and consular appropriation bill.

Mr. Stephen G. Porter, of Pennsylvania, having asked unanimous consent that the statement be read in lieu of the report, Mr. Frank Gardner, of Indiana, inquired when a point of order should be presented.

The Speaker replied that points of order were properly offered after the reading of the report, and in event the reading of the report was dispensed with, the should be submitted before the reading of the statement, which was in the nature of debate.

Thereupon, Mr. Tom Connally, of Texas, after Mr. Porter's request had been agreed to, and in advance of the reading of the statement, made the point of order that the managers had transcended their powers including in the conference report the following provision relative to the International Boundary Commission:

Provided, however, That this is to be considered as the final appropriation under existing treaties for the maintenance of said commission, and the President is hereby requested to notify the Republic of Mexico that the United States desires to dissolve the commission from and after six months from July 1, 1920.

The Speaker [2] sustained the point of order.

3284. A point of order against a conference report is properly made after the report has been read and before the reading of the statement.

Incorporation of new matter, when nonessential, subjects a conference report to the point of order that the conferees have exceeded their jurisdiction.

The invalidation of conference report on a pint of order is equivalent to is rejection by the House, but does not give the Member raising the question of order the right to the floor.

On January 12, 1917,[3] Mr. John L. Burnett, of Alabama, called up the conference report on the bill (H. R. 10384), the immigration bill.

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[1] Second session Sixty-sixth Congress, Record, p. 6709.

[2] Frederick H. Gillett, of Massachusetts, Speaker.

[3] Second session Sixty-fourth Congress, Record p. 1294.

The Speaker having directed the clerk to read the report, Mr. William S. Bennet, of New York, inquired when it would be proper to submit points of order.

The Speaker held that points of order against a conference report should be submitted after the report had been read and before the reading of the statement, which was in the nature of consideration.

The reading of the report having been completed, Mr. Bennet made the point of order that the conferees had exceeded their authority in providing that the act should take effect July 1, 1917, when the dates fixed by the House and Senate provisions were July 1, 1916, and May 1, 1917, respectively.

Mr. Augustus P. Gardner, of Massachusetts, also made the point of order that the conferees in inserting the language—

> And no alien now in any way excluded from or prevented from entering the United States shall be admitted to the United States.

had injected new matter not contained in the bill as passed by either House.

Mr. Gardner also raised the point of order that the matter inserted giving the Secretary of Labor authority to enter into certain negotiations was not within the compass of the matters of difference between the two Houses.

In debating the question of order, Mr. James R. Mann, of Illinois, argued that the date at which the act should take effect was not an essential provision and did not constitute the essence of the act and should not be permitted to invalidate the entire conference report.

The Speaker [1] ruled:

> The Chair is ready to rule on all three of these points. He overrules both points made by the gentleman from Massachusetts.
>
> Now, on this other point, about this trouble as to time, it is unnecessary for the Chair to state that he dislikes exceedingly to rule out a conference report on a point of order. But it seems to the Chair that it is better to have a rule and stick to it than to have a variety of decisions about the very same point.
>
> This case on the question of time is almost exactly "on all fours" with the decision the present incumbent of the chair rendered on the shipping bill. That was a question about time. In this case the House fixed this date of July 1, 1916. The Senate fixed it at May 1, 1917. The conferees fix the date as July 1, 1917.
>
> Well, it may be true, as the gentleman from Illinois states, that it is a sort of immaterial matter; but you can not have a ruling one way because the Chair or somebody else thinks the matter is immaterial and have it the other way when you think it is important.
>
> Now, on that shipping bill there was this same identical question of time, so in rendering that decision I said:
>
> "The Chair sustains the point of order as to time."

And he gives these reasons:

> "If there is anything settled about conferences between the two Houses it is this: Where two amounts are named and the question is referred to the conferees they may oscillate as much as they please between the two extremes, but they can not go below the lower amount and they can not go above the higher amount. That applies to sums of money in appropriation bills. This has been ruled so often that it is as familiar as the multiplication table. In tariff bills, where one House suggests one rate on any given article and the other House suggests another rate the conferees can not go below the lower and they can not go above the higher rate."

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[1] Champ Clark, of Missouri, Speaker.

Now, everybody will admit that it is a simple regulation as to a tariff bill. If that were not true, the conferees can go out and actually make a new tariff bill.

"As far as the suggestion that where everything after the acting clause is struck out, the conferees have carte blanche to bring in a bill, that is not the case here."

It is not the case now. There is no use to read the rest of it. The Chair sustains the point of order.

The Speaker then proposed to recognize Mr. Burnett to move disposition of the Senate amendments, when Mr. Bennett submitted that having preferred a point of order which had been sustained, he was entitled to the floor for the purpose of making a preferential motion, as when an essential motion by the Member in charge had been decided adversely.

The Speaker dissented and held the sustaining of a point of order was not such a proceeding as entitled the opposition to recognition, and recognized Mr. Burnett, the Member in charge, to move to send the bill to conference.

3285. Points of order against conference reports should be made after the reading of the report and before the reading of the statement, and, if the statement is read in lieu of the report, should be made or reserved before the reading of the statement.—On April 3, 1992,[1] the House was considering the conference report on the Interior Department appropriation bill. In motion of Mr. Louis C. Cramton, of Michigan, by unanimous consent, the statement was read in lieu of the report.

Following the reading of the statement, Mr. John E. Raker, of California, proposed to offer a point of order against the conference report.

Mr. William H. Stafford, of Wisconsin, objected that it was too late to entertain a point of order against the report, as the statement had been read.

The Speaker[2] stated that while it was well settled that points of order could not be entertained after the reading of the statement when the conference report was read, he was unable to recall any ruling on the question of when points of order must be presented when the statement was read in lieu of the report. Mr. James R. Mann, of Illinois, recalled that Speaker Clark had ruled on a number of occasions that where the statement was read in lieu of the report it was necessary to submit points of order before the reading of the statement.

Whereupon, the Speaker announced:

The Chair is informed by the parliamentary clerk that the Chair has never ruled on this question, and no authority is cited for allowing it after the statement, and the gentleman from Illinois states that Speaker Clark explicitly ruled in such cases that the point of order must be reserved. Therefore the Chair sustains the point of order.

3286. A point of order as to a conference report should be made before debate begins.—On March 3, 1931,[3] the conference report on the bill (H. R. 10672) to amend the naturalization laws with respect to notices of petitions for citizenship was taken up in the House.

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[1] Second session Sixty-seventh Congress, Record, p. 4947.

[2] Frederick H. Gillett, of Massachusetts, Speaker.

[3] Third session Seventy-first Congress, Record, p. 7154

Debate having begun, Mr. John N. Garner, of Texas, raised the question of order that the managers had incorporated in the report provisions which were not in disagreement.

The Speaker[1] declined to entertain the point of order on the ground that it could not be presented after debate had begun.

3287. Points of order against conference reports should be made before the statement is read, and come too late after the reading of the statement has been concluded, even where the reading of the report has been waived.—On June 24, 1910,[2] the Clerk concluded the reading of the statement of the conferees on the conference report on the general deficiency bill.

Mr. James W. Murphy, of Wisconsin, proposed to lodge a point of order against the report.

Mr. James A. Tawney, of Minnesota, submitted that the point of order came too late after the reading of the statement.

The Speaker pro tempore[3] sustained the point of order and said:

The statement having been read, the gentleman from Wisconsin, so far as the Chair could hear, makes the point of order that in disposing of the Senate amendment the conferees have put in something beyond their power to insert—something not within their jurisdiction. Now, the gentleman from Minnesota makes the point of order that the point of order made by the gentleman from Wisconsin comes too late, not having been made until after the statement had been read.

In the Manual, on page 266, section 540, the following appears:

"In the House points of order against reports (conference) are made or reserved after the report is read and before the reading of the statement or consideration begins or the report has been agreed to."

That was the ruling made in 1907 by the present Speaker of the House. He held that points of order were in time after the reading of the report, but out of abundant caution might be reserved in advance of its reading, but that after the reading of the statement the point came too late, Speaker Henderson ruled to the same effect, as will appear by reference to Hinds' Precedents, volume 5, section 6441. The Chair thinks that in this case the point of order should have been made or reserved before the statement was read. The reading of the report was waived by unanimous consent, but that did not prevent the making or reserving of a point of order before the statement was read. The Chair is of the opinion that at this time it is too late, and sustaining the point made by the gentleman from Minnesota, overrules the point of order made by the gentleman from Wisconsin.

3288. When the reading of the conference report is dispensed with, points of order must be made before the statement is read.

Where an amendment of one House proposes to strike out a paragraph of a bill of the other, whether a substitute therefor is proposed or not, and the amendment has been disagreed to, the conferees have the whole subject before them and may report any provision germane thereto.

To be in order in a conference report a subject must have been treated in the bill as it passed the first House, in the amendment of the other House, or in an amendment of the first to the amendment of the second.

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[1] Nicholas Longworth, of Ohio, Speaker.

[2] Second session Sixty-first Congress, Record, p. 8963.

[3] Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

On August 23, 1912,[1] Mr. John A. Moon, of Tennessee, called up the conference report on the Post Office appropriation bill and asked unanimous consent that the statement be read in lieu of the report.

Pending the request, Mr. Victor Murdock, of Kansas, inquired when it would be in order to raise a question of order against the report.

The Speaker informed him that, if the reading of the report was dispensed with, points of order, if made at all, should be made before the statement was read.

Thereupon, Mr. Murdock made the point of order that the conferees had exceeded their authority by receding from disagreement to Senate amendment No. 60 and agreeing to it with an amendment providing an appropriation of $35,000 for transporting the mails across the Mississippi bridge at St. Louis, not in dispute between the two Houses.

The Speaker[2] overruled the point of order and said:

> Twice within the last three weeks the Chair has rendered elaborate opinions on the very point involved here.
>
> The rule is clear, and it is a hundred years old, a little more than a hundred years, because it was established on the 23d day of June, 1812, by Speaker Clay. The rule is that a subject that is in a conference report must have been treated either by the House, or by an amendment of the Senate, or by a House amendment to a Senate amendment. It must be germane. That is all that there is in it.
>
> Now, let us see. Speaker Cannon stated the matter in two or three sentences once in a very comprehensive manner, thus:
>
> "It is true that if the whole paragraph in the bill as it passed the House had been stricken out"—
>
> And that is practically the case here—
>
> "and a substitute therefor proposed by the Senate, or if the Senate had stricken out the paragraph without proposing a substitute, and the House had disagreed to the Senate amendment, then the conferees might have had jurisdiction touching the whole matter and might have agreed upon any provision that would have been germane."
>
> That statement can not be improved on as to the rule. Let us see how this case fits the rule. The House provision was that—
>
> "No part of this appropriation shall be paid for carrying the mail over the bridges across the Mississippi River at St. Louis, Mo., over and above the regular mileage rates for the transportation of the mail by railroad routes."
>
> What is the subject of the words I have read? Why, it is carrying the mail from East St. Louis, Ill., to the city of St. Louis, Mo. That is all there is to that. What does the Senate amendment do? It treats of identically the same subject, and nothing else. What does this provision which has been put in by the conferees do? It treats of identically the same subject, and nothing else. If there ever was a case that fits the rule as laid down by Speaker Cannon, in which he followed all his predecessors, it is this one, and the point of order is overruled.

3289. It is too late to raise a question of order against a conference report after the statement is read, whether after the reading of the report or in lieu of the report. On June 12, 1917,[3] the House took up the consideration of the conference report on the urgent deficiency appropriation bill.

On motion of Mr. John J. Fitzgerald, of New York, by unanimous consent, the statement was ordered read in lieu of the report.

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[1] Second session Sixty-second Congress, Report, p. 11755–11759.

[2] Champ Clerk, of Missouri, Speaker.

[3] First session Sixty-fifth Congress, Record, p. 3537.

The Clerk having completed the reading of the statement, Mr. Chas. Pope Caldwell, of New York, raised a question of order against the report.

Mr. Fitzgerald submitted that the objection was not in order at this stage of the proceedings.

The Speaker' sustained the point of order and said:

The gentleman's point of order comes too late.

3290. On June 20, 1932,[2] Mr. John McDuffie, of Alabama, called up the conference report on the bill (H. R. 11267), the legislative appropriation bill, and asked unanimous consent that the statement be read in lieu of the report.

The Speaker pro tempore[3] submitted the request and announced there was no objection, and directed the Clerk to read.

In the course of the reading of the statement, Mr. Fiorello H. LaGuardia, of New York, interrupted and proposed to reserve all points of order on the conference report.

Mr. William H. Stafford, of Wisconsin, objected that the reservation came too late after the reading of the statement had begun.

The Speaker pro tempore sustained the point of order and said:

If the gentleman will permit, the gentleman from Alabama asked unanimous consent that the statement be read in lieu of the report, and the Clerk began the reading of the statement. Thereupon, after a part of the statement had been read, the gentleman from New York sought to interpose a reservation of points of order. The request came too late.

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[1] Champ Clark, of Missouri, Speaker.

[2] First session Seventy-second Congress, Record, p. 13509.

[3] William B. Bankhead, of Alabama, Speaker pro tempore.